

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Jacques offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 114-1242 and insert:

7 Any petition, writ, or action brought under this paragraph must
 8 be commenced within 1 year from the time the incident, conduct,
 9 or conditions occurred or within 1 year after the time the
 10 incident, conduct, or conditions were discovered, or should have
 11 been discovered.

12 ~~(g) Except for actions described in subsection (9), an~~
 13 ~~action brought by or on behalf of a prisoner, as defined in s.~~
 14 ~~57.085, relating to the conditions of the prisoner's~~
 15 ~~confinement.~~

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

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

24 760.701 Lawsuits by prisoners.—

25 (1) For the purposes of this section, the term "prisoner"
26 means any person incarcerated or detained in any jail, prison,
27 or other correctional facility, who is accused of, convicted of,
28 sentenced for, or adjudicated delinquent for, violations of
29 criminal law or the terms and conditions of parole, probation,
30 pretrial release, or diversionary program.

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

36 (3) The court shall on its own motion or on the motion of
37 a party dismiss any action brought relating to the conditions of
38 the prisoner's confinement under 42 U.S.C. s. 1983, or any other
39 state or federal law, by a prisoner if the court is satisfied
40 that the action is frivolous, malicious, fails to state a claim

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41 upon which relief can be granted, or seeks monetary relief from
42 a defendant who is immune from such relief. The court shall
43 review any such action pursuant to s. 57.085(6).

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

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

53 **Section 4. Paragraph (d) of subsection (2) of section**
54 **775.087, Florida Statutes, is amended, paragraph (e) is added to**
55 **that subsection, paragraph (a) of that subsection is**
56 **republished, paragraph (e) of subsection (3) is redesignated as**
57 **paragraph (f), paragraph (d) of that subsection is amended, a**
58 **new paragraph (e) is added to that subsection, and paragraph (a)**
59 **of that subsection is republished, to read:**

60 775.087 Possession or use of weapon; aggravated battery;
61 felony reclassification; minimum sentence.-

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

65 a. Murder;

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- 66 b. Sexual battery;
- 67 c. Robbery;
- 68 d. Burglary;
- 69 e. Arson;
- 70 f. Aggravated battery;
- 71 g. Kidnapping;
- 72 h. Escape;
- 73 i. Aircraft piracy;
- 74 j. Aggravated child abuse;
- 75 k. Aggravated abuse of an elderly person or disabled
76 adult;
- 77 l. Unlawful throwing, placing, or discharging of a
78 destructive device or bomb;
- 79 m. Carjacking;
- 80 n. Home-invasion robbery;
- 81 o. Aggravated stalking;
- 82 p. Trafficking in cannabis, trafficking in cocaine,
83 capital importation of cocaine, trafficking in illegal drugs,
84 capital importation of illegal drugs, trafficking in
85 phencyclidine, capital importation of phencyclidine, trafficking
86 in methaqualone, capital importation of methaqualone,
87 trafficking in amphetamine, capital importation of amphetamine,
88 trafficking in flunitrazepam, trafficking in gamma-
89 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,

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90 trafficking in Phenethylamines, or other violation of s.
91 893.135(1);

92 q. Possession of a firearm by a felon; or

93 r. Human trafficking

94

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

109 2. Any person who is convicted of a felony or an attempt
110 to commit a felony listed in sub-subparagraphs 1.a.-p. or sub-
111 subparagraph 1.r., regardless of whether the use of a weapon is
112 an element of the felony, and during the course of the
113 commission of the felony such person discharged a "firearm" or

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114 "destructive device" as defined in s. 790.001 shall be sentenced
115 to a minimum term of imprisonment of 20 years.

116 3. Any person who is convicted of a felony or an attempt
117 to commit a felony listed in sub-subparagraphs 1.a.-p. or sub-
118 subparagraph 1.r., regardless of whether the use of a weapon is
119 an element of the felony, and during the course of the
120 commission of the felony such person discharged a "firearm" or
121 "destructive device" as defined in s. 790.001 and, as the result
122 of the discharge, death or great bodily harm was inflicted upon
123 any person, the convicted person shall be sentenced to a minimum
124 term of imprisonment of not less than 25 years and not more than
125 a term of imprisonment of life in prison.

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

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

145 (3) (a)1. Any person who is convicted of a felony or an
146 attempt to commit a felony, regardless of whether the use of a
147 firearm is an element of the felony, and the conviction was for:

- 148 a. Murder;
- 149 b. Sexual battery;
- 150 c. Robbery;
- 151 d. Burglary;
- 152 e. Arson;
- 153 f. Aggravated battery;
- 154 g. Kidnapping;
- 155 h. Escape;
- 156 i. Sale, manufacture, delivery, or intent to sell,
157 manufacture, or deliver any controlled substance;
- 158 j. Aircraft piracy;
- 159 k. Aggravated child abuse;
- 160 l. Aggravated abuse of an elderly person or disabled
161 adult;
- 162 m. Unlawful throwing, placing, or discharging of a
163 destructive device or bomb;

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- 164 n. Carjacking;
165 o. Home-invasion robbery;
166 p. Aggravated stalking;
167 q. Trafficking in cannabis, trafficking in cocaine,
168 capital importation of cocaine, trafficking in illegal drugs,
169 capital importation of illegal drugs, trafficking in
170 phencyclidine, capital importation of phencyclidine, trafficking
171 in methaqualone, capital importation of methaqualone,
172 trafficking in amphetamine, capital importation of amphetamine,
173 trafficking in flunitrazepam, trafficking in gamma-
174 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
175 trafficking in Phenethylamines, or other violation of s.
176 893.135(1); or
177 r. Human trafficking

178
179 and during the commission of the offense, such person possessed
180 a semiautomatic firearm and its high-capacity detachable box
181 magazine or a machine gun as defined in s. 790.001, shall be
182 sentenced to a minimum term of imprisonment of 15 years.

183 2. Any person who is convicted of a felony or an attempt
184 to commit a felony listed in subparagraph 1., regardless of
185 whether the use of a weapon is an element of the felony, and
186 during the course of the commission of the felony such person
187 discharged a semiautomatic firearm and its high-capacity box

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188 magazine or a "machine gun" as defined in s. 790.001 shall be
189 sentenced to a minimum term of imprisonment of 20 years.

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

201 (d) It is the intent of the Legislature that offenders who
202 possess, carry, display, use, threaten to use, or attempt to use
203 a semiautomatic firearm and its high-capacity detachable box
204 magazine or a machine gun as defined in s. 790.001 be punished
205 to the fullest extent of the law. The court shall impose and
206 the minimum term terms of imprisonment required under paragraph
207 (a) imposed pursuant to this subsection shall be imposed for
208 each qualifying felony offense court for which the person is
209 convicted. If the offender is convicted of multiple felony
210 offenses for which paragraph (a) requires the imposition of a
211 minimum term of imprisonment, the court shall impose any such
212 terms term of imprisonment provided for in this subsection

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213 ~~consecutively to any other term of imprisonment imposed for any~~
214 ~~other felony offense.~~

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

221 (f) As used in this subsection, the term:

222 1. "High-capacity detachable box magazine" means any
223 detachable box magazine, for use in a semiautomatic firearm,
224 which is capable of being loaded with more than 20 centerfire
225 cartridges.

226 2. "Semiautomatic firearm" means a firearm which is
227 capable of firing a series of rounds by separate successive
228 depressions of the trigger and which uses the energy of
229 discharge to perform a portion of the operating cycle.

230 **Section 5. Section 922.10, Florida Statutes, is amended to**
231 **read:**

232 922.10 Execution of death sentence; executioner.—A death
233 sentence shall be executed by electrocution, ~~or~~ lethal
234 injection, or a method not deemed unconstitutional in accordance
235 with s. 922.105. The warden of the state prison shall designate
236 the executioner. The warrant authorizing the execution shall be
237 read to the convicted person immediately before execution.

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238 **Section 6. Subsection (3) of section 922.105, Florida**
239 **Statutes, is amended to read:**

240 922.105 Execution of death sentence; prohibition against
241 reduction of death sentence as a result of determination that a
242 method of execution is unconstitutional.—

243 (3) If electrocution or lethal injection is held to be
244 unconstitutional by the Florida Supreme Court under the State
245 Constitution, or held to be unconstitutional by the United
246 States Supreme Court under the United States Constitution, or if
247 the United States Supreme Court declines to review any judgment
248 holding a method of execution to be unconstitutional under the
249 United States Constitution made by the Florida Supreme Court or
250 the United States Court of Appeals that has jurisdiction over
251 Florida, or if the acquisition of chemicals necessary for lethal
252 injection by the department becomes impossible or impractical,
253 all persons sentenced to death for a capital crime shall be
254 executed by a method not deemed unconstitutional any
255 constitutional method of execution.

256 **Section 7. Present paragraphs (b) through (e) of**
257 **subsection (4) of section 934.425, Florida Statutes, are**
258 **redesignated as paragraphs (e) through (h), respectively, and**
259 **new paragraphs (b), (c), and (d) are added to that subsection,**
260 **to read:**

261 934.425 Installation or use of tracking devices or
262 tracking applications; exceptions; penalties.—

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263 (4) This section does not apply to:

264 (b) A correctional officer, correctional probation
265 officer, or any other officer or support personnel, as those
266 terms are defined in s. 943.10, of the Department of Corrections
267 who lawfully installs, places, or uses a tracking device or
268 tracking application on a person in his or her care, custody, or
269 control and in the course and scope of his or her employment.

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

276 (d) A person authorized to install, place, or use a
277 tracking device or tracking application pursuant to a court
278 order.

279 **Section 8. Section 945.41, Florida Statutes, is amended to**
280 **read:**

281 945.41 Mental health treatment for inmates; legislative
282 intent of ss. 945.40-945.49.-

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

284 (a) ~~mentally ill~~ Inmates in the custody of the department
285 who have a mental illness ~~of Corrections~~ receive an evaluation
286 and appropriate treatment for their mental illness through a

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287 continuum of outpatient and inpatient mental health treatment
288 and services.

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

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

300 (2) INDIVIDUAL DIGNITY AND TREATMENT.—

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

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

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

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

329 (e) (2) Mental health treatment facilities shall be secure
330 and adequately equipped and staffed for the provision of mental
331 health treatment and services. Inmates shall be offered the
332 least restrictive appropriate available treatment and services
333 based on their assessed needs and best interests and consistent
334 with improvement of their condition for facilitation of
335 appropriate adjustment within the correctional environment

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336 ~~services and that, to the extent possible, such services be~~
337 ~~provided in the least restrictive manner consistent with optimum~~
338 ~~improvement of the inmate's condition.~~

339 (3) EXPRESS AND INFORMED CONSENT.—

340 (a) A mentally competent inmate offered mental health
341 treatment within the department shall give his or her express
342 and informed consent for such treatment. Before giving such
343 consent, the following information shall be provided and
344 explained in plain language to the inmate:

345 1. The proposed treatment.

346 2. The purpose of the treatment.

347 3. The common risks, benefits, and side effects of the
348 treatment and the specific dosage range for a medication, if
349 applicable.

350 4. Alternative treatment modalities.

351 5. The approximate length of treatment.

352 6. The potential effects of stopping treatment.

353 7. How treatment will be monitored.

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

358 (b) Inmates who are determined to be incompetent to
359 consent to treatment shall receive treatment deemed to be
360 necessary for their appropriate care and for the safety of the

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361 inmate or others in accordance with the procedures established
362 in ss. 945.40-945.49.

363 (4)-(3) PAROLE.-Inmates who are transferred to any facility
364 for the purpose of mental health treatment and services shall be
365 given consideration for parole and be eligible for release by
366 reason of gain-time allowances as provided in s. 944.291 and
367 release by expiration of sentence, consistent with guidelines
368 established for that purpose by the department.

369 (5)-(4) YOUTHFUL OFFENDERS.-Any inmate sentenced as a
370 youthful offender, or designated as a youthful offender by the
371 department under chapter 958, who is transferred pursuant to
372 this act to a mental health treatment facility shall be
373 separated from other inmates, if necessary, as determined by the
374 warden of the mental health treatment facility.

375 (6)-(5) TREATMENT FACILITIES.-The department may designate
376 mental health treatment facilities for adult, youthful, and
377 female offenders or may contract with other appropriate
378 entities, persons, or agencies for such services.

379 (7) EMERGENCY MEDICAL TREATMENT.-Notwithstanding any other
380 provision of this section, when the express and informed consent
381 of an inmate placed in a mental health treatment facility in
382 accordance with s. 945.44 cannot be obtained or the inmate is
383 incompetent to consent to treatment, the warden of a mental
384 health treatment facility, or his or her designated
385 representative, under the direction of the inmate's attending

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386 physician, may authorize nonpsychiatric, emergency surgical
387 treatment or other routine medical treatment if such treatment
388 is deemed lifesaving or there is a situation threatening serious
389 bodily harm to the inmate.

390 **Section 9. Section 945.42, Florida Statutes, is amended to**
391 **read:**

392 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
393 945.40-945.49, the following terms shall have the meanings
394 ascribed to them, unless the context shall clearly indicate
395 otherwise:

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

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

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

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411 (4) "Express and informed consent" means consent
412 voluntarily given in writing, by a competent inmate, after
413 sufficient explanation and disclosure of the subject matter
414 involved, to enable the inmate to make a knowing and willful
415 decision without any element of force, fraud, deceit, duress, or
416 other form of constraint or coercion.

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

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

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

426 (6) "Incompetent to consent to treatment" means a state in
427 which an inmate's judgment is so affected by mental illness that
428 he or she lacks the capacity to make a well-reasoned, willful,
429 and knowing decision concerning his or her medical or mental
430 health treatment and services. The term is distinguished from
431 the term "incompetent to proceed," as defined in s. 916.106, and
432 only refers to an inmate's inability to provide express and
433 informed consent for medical or mental health treatment and
434 services.

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435 ~~(4) "Director" means the Director for Mental Health~~
436 ~~Services of the Department of Corrections or his or her~~
437 ~~designee.~~

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

444 ~~(a)1. The inmate is demonstrating a refusal to care for~~
445 ~~himself or herself and without immediate treatment intervention~~
446 ~~is likely to continue to refuse to care for himself or herself,~~
447 ~~and such refusal poses an immediate, real, and present threat of~~
448 ~~substantial harm to his or her well being; or~~

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

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

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

458 ~~(7)-(6) "In need of care and treatment" means that an~~
459 ~~inmate has a mental illness for which inpatient services in a~~

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460 mental health treatment facility are necessary and ~~that, but for~~
461 ~~being isolated in a more restrictive and secure housing~~
462 ~~environment,~~ because of the mental illness:

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

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

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

474 (b) The inmate is incompetent to consent to treatment and
475 is unable or is refusing to provide express and informed consent
476 to treatment.

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

479 ~~(d)-(e)~~ All available less restrictive treatment
480 alternatives that would offer an opportunity for improvement of
481 the inmate's condition have been clinically determined to be
482 inappropriate.

483 ~~(8)-(7)~~ "Inmate" means any person committed to the custody
484 of the Department of Corrections.

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485 (9) "Involuntary examination" means a psychiatric
486 examination performed at a mental health treatment facility to
487 determine whether an inmate should be placed in the mental
488 health treatment facility for inpatient mental health treatment
489 and services.

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

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

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

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

503 (11)~~(8)~~ "Mental health treatment facility" means any
504 extended treatment or hospitalization-level unit within the
505 corrections system which the Assistant Secretary for Health
506 Services of the department specifically designates by rule to
507 provide acute mental health ~~psychiatric~~ care and which may
508 include involuntary treatment and therapeutic intervention in
509 contrast to less intensive levels of care such as outpatient

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510 mental health care, transitional mental health care, or crisis
511 stabilization care. The term does not include a forensic
512 facility as defined in s. 916.106.

513 ~~(12)-(9)~~ "Mental illness" or "mentally ill" means an
514 impairment of the mental or emotional processes that exercise
515 conscious control of one's actions or of the ability to perceive
516 or understand reality, which impairment substantially interferes
517 with the person's ability to meet the ordinary demands of
518 living. However, for the purposes of transferring an inmate to a
519 mental health treatment facility, the term does not include a
520 developmental disability as defined in s. 393.063, simple
521 intoxication, or conditions manifested only by antisocial
522 behavior or substance abuse addiction. However, an individual
523 who is developmentally disabled may also have a mental illness.

524 ~~(13)-(10)~~ "Psychiatrist" means a medical practitioner
525 licensed pursuant to chapter 458 or chapter 459 who has
526 primarily diagnosed and treated nervous and mental disorders for
527 a period of not less than 3 years inclusive of psychiatric
528 residency.

529 ~~(14)-(11)~~ "Psychological professional" means a behavioral
530 practitioner who has an approved doctoral degree in psychology
531 as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by
532 the department or who is licensed as a psychologist pursuant to
533 chapter 490.

534 ~~(15)-(12)~~ "Secretary" means the Secretary of Corrections.

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535 ~~(13)~~ (16) "Transitional mental health care" means a level
536 of care that is more intensive than outpatient care, but less
537 intensive than crisis stabilization care, and is characterized
538 by the provision of traditional mental health treatment and
539 services ~~treatments~~ such as group and individual therapy,
540 activity therapy, recreational therapy, and psychotropic
541 medications in the context of a secure, structured residential
542 setting. Transitional mental health care is indicated for an
543 inmate ~~a person~~ with chronic or residual symptomatology who does
544 not require crisis stabilization care or acute mental health
545 ~~psychiatric~~ care, but whose impairment in functioning
546 nevertheless renders him or her incapable of adjusting
547 satisfactorily within the general inmate population.

548 (17) "Treatment" means psychotropic medications prescribed
549 by a medical practitioner licensed pursuant to chapter 458 or
550 chapter 459, including those laboratory tests and related
551 medical procedures that are essential for the safe and effective
552 administration of a psychotropic medication and psychological
553 interventions and services such as group and individual
554 psychotherapy, activity therapy, recreational therapy, and music
555 therapy. The term does not include forensic services for inmate
556 defendants who are incompetent to proceed as defined in s.
557 916.106.

558 ~~(14)~~ (18) "Warden" means the warden of a state corrections
559 facility or his or her designee.

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560 **Section 10. Section 13. Section 945.43, Florida Statutes,**
561 **is amended to read:**

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

564 945.43 Involuntary examination.-

565 (1) If there is reason to believe that an inmate has a
566 mental illness and the inmate is in need of care and treatment,
567 the inmate's treating clinician may refer the inmate to a mental
568 health treatment facility for an involuntary examination. Upon
569 referral, the warden of the facility where the inmate is housed
570 shall transfer the inmate to a mental health treatment facility.

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

575 (3) If, after the examination, the inmate is determined to
576 be in need of care and treatment, the psychiatrist shall propose
577 a recommended course of treatment that is essential to the care
578 of the inmate and the warden shall initiate proceedings for
579 placement of the inmate in the mental health treatment facility
580 and for involuntary treatment of the inmate as specified in s.
581 945.44. If the inmate is not in need of care and treatment, he
582 or she shall be transferred out of the mental health treatment
583 facility and provided with appropriate mental health services.

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584 (4) The involuntary examination and initiation of court
585 proceedings for the placement and applicable involuntary
586 treatment of the inmate in the mental health treatment facility
587 shall be completed within 10 calendar days after arrival.

588 (5) The inmate may remain in the mental health treatment
589 facility pending a hearing after the timely filing of a petition
590 as described in s. 945.44. Pending a hearing, necessary
591 emergency treatment may be provided in the mental health
592 treatment facility upon the written order of a physician as
593 provided in s. 945.48.

594 **Section 11. Section 945.44, Florida Statutes, is amended**
595 **to read:**

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

598 945.44 Placement and treatment of an inmate in a mental
599 health treatment facility.—

600 (1) CRITERIA FOR INVOLUNTARY PLACEMENT OR TREATMENT.—

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

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

607 1. The inmate is mentally ill

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

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

612 4. The inmate is gravely disabled or poses a likelihood of
613 serious harm.

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

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

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

626 (b) The inmate shall be provided with a copy of the
627 petition along with the proposed treatment, the basis for the
628 proposed treatment, the names of the examining experts, and the
629 date, time, and location of the hearing. After considering the
630 public safety and security concerns presented by transporting
631 the inmate or in conducting onsite hearings, the court may order
632 that the hearing be conducted by electronic means or in person
633 at the facility or at another location designated by the court.

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634 If the hearing is ordered by the court to be conducted at a
635 location other than the facility, the department is authorized
636 to transport the inmate to the location of the hearing.

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

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

651 (e) The court may waive the presence of the inmate at the
652 hearing if the waiver is consistent with the best interests of
653 the inmate and the inmate's counsel does not object. One of the
654 inmate's physicians whose opinion supported the petition shall
655 appear as a witness at the hearing.

656 (3) ORDERS FOR INVOLUNTARY PLACEMENT AND TREATMENT.-

657 (a) If the court finds by clear and convincing evidence
658 that the inmate meets the criteria in paragraph (1)(a), the

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659 court must order that the inmate be involuntarily placed in the
660 mental health treatment facility for a period not to exceed 6
661 months.

662 (b) If the court finds by clear and convincing evidence
663 that the inmate meets the criteria in subsection (1)(b), the
664 court may order that the inmate be involuntarily treated for a
665 period not to exceed 6 months, concurrent with an order for
666 placement in the mental health treatment facility. In
667 determining whether to order involuntary treatment under this
668 section, the court must consider the inmate's expressed
669 preference regarding treatment; whether the inmate is able to
670 express a preference; the probability of adverse side effects;
671 the prognosis for the inmate without treatment; the prognosis
672 for the inmate with treatment; and any other factors the court
673 deems relevant.

674 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order
675 authorizing involuntary placement and treatment shall allow such
676 placement and treatment for a period not to exceed 6 months
677 following the date of the order. Unless the court is notified in
678 writing that the inmate has been discharged from the mental
679 health treatment facility because he or she is no longer in need
680 of care and treatment, has been transferred to another
681 institution of the department, or has been released from the
682 department's custody, the warden shall, before the expiration of
683 the initial order, file a notice with the court to set a status

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684 hearing for an order authorizing the continuation of placement
685 and treatment for another period not to exceed 6 months. This
686 procedure shall be repeated until the inmate is no longer in
687 need of care and treatment. Placement and treatment may be
688 continued pending a hearing after the timely filing of any
689 petition.

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

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

699 **Section 12.** Section 945.45, Florida Statutes, is repealed.

700 **Section 13. Subsection (3) of section 945.46, Florida**
701 **Statutes, is renumbered as subsection (5) and amended, and new**
702 **subsections (3) and (4) are added to that section, to read:**

703 945.46 Initiation of involuntary placement proceedings
704 with respect to a mentally ill inmate scheduled for release.—

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

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709 Children and Families, the inmate, and the state attorney and
710 public defender of the judicial circuit in which the inmate is
711 located. A fee may not be charged for the filing of a petition
712 under chapter 394. Within 1 court working day after the filing
713 of a petition for involuntary inpatient placement, the court
714 shall appoint the public defender to represent the inmate who is
715 the subject of the petition, unless the inmate is otherwise
716 represented by counsel. The clerk of the court shall immediately
717 notify the public defender of such appointment. Any attorney
718 representing the inmate shall have access to the inmate,
719 witnesses, and records relevant to the presentation of the
720 patient's case and shall represent the interests of the inmate,
721 regardless of the source of payment to the attorney. The state
722 attorney for the circuit in which the inmate is located shall
723 represent the state, rather than the petitioning warden, as the
724 real party in interest in the proceeding. The remainder of the
725 proceedings shall be governed by chapter 394.

726 (4) The court must consider the public safety and security
727 concerns presented by transporting a mentally ill inmate versus
728 having the inmate appear at the facility or by electronic means
729 when determining where the hearing must be held. If the hearing
730 is ordered by the court to be conducted at a location other than
731 the facility or by electronic means, the department is
732 authorized to transport the inmate to the location of the
733 hearing.

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734 ~~(5)(3)~~ The department may transport an individual who is
735 being released from its custody to a receiving or mental health
736 treatment facility for involuntary examination or placement.
737 Such transport shall be made to a facility that is specified by
738 the Department of Children and Families as able to meet the
739 specific needs of the individual. If the Department of Children
740 and Families does not specify a facility, transport shall ~~may~~ be
741 made to the nearest receiving facility.

742 **Section 14. Section 945.47, Florida Statutes, is amended**
743 **to read:**

744 945.47 Discharge of inmate from mental health treatment.-

745 (1) An inmate who has been placed in a mental health
746 treatment facility ~~transferred~~ for the purpose of mental health
747 treatment shall be discharged from treatment by the warden under
748 the following conditions:

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

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

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758 (2) At any time that an inmate who has received mental
759 health treatment while in the custody of the department becomes
760 eligible for release under supervision or upon end of sentence,
761 a record of the inmate's mental health treatment may be provided
762 to the Florida Commission on Offender Review and to the
763 Department of Children and Families to arrange postrelease
764 aftercare placement and to prospective recipient inpatient
765 health care or residential facilities upon request. The record
766 shall include, at a minimum, a summary of the inmate's
767 diagnosis, length of stay in treatment, clinical history,
768 prognosis, prescribed medication, treatment plan, and
769 recommendations for aftercare services.

770 **Section 15. Section 945.48, Florida Statutes, is amended**
771 **to read:**

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

774 945.48 Emergency treatment orders and use of force.—

775 (1) EMERGENCY MEDICATION.—The department is authorized to
776 involuntarily administer psychotropic medication to an inmate on
777 an emergency basis without following the procedure outlined in
778 s. 945.43 only as specified in this section. An emergency
779 treatment order for psychotropic medication may be provided to
780 the inmate upon the written order of a physician licensed
781 pursuant to chapter 458 or chapter 459 in an emergency not
782 exceeding 72 hours, excluding weekends and legal holidays. An

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783 emergency exists when an inmate with a mental illness presents
784 an immediate threat of:

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

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

788 (2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may
789 be administered only when the medication constitutes an
790 appropriate treatment for a mental illness and its symptoms and
791 alternative treatments are not available or indicated, or would
792 not be effective. If after the 72-hour period the inmate has not
793 given express and informed consent to the medication initially
794 refused, the inmate's treating physician shall refer the inmate
795 to a mental health treatment facility for an involuntary
796 examination in accordance with the procedures described in s.
797 945.43. Upon such referral, the warden shall, within 48 hours,
798 excluding weekends and legal holidays, transfer the inmate to a
799 mental health treatment facility. Upon transfer of the inmate
800 for an involuntary examination, the emergency treatment order
801 may be continued upon the written order of a physician as long
802 as the physician has determined that the emergency continues to
803 present a danger to the safety of the inmate or others and the
804 criteria described in this subsection are satisfied. If
805 psychotropic medication is still recommended after the
806 emergency, it may only be administered after following the
807 procedures outlined in s. 945.44.

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

817 **Section 16. Section 945.485, Florida Statutes, is created**
818 **to read:**

819 945.485 Management and treatment for self-injurious
820 behaviors.—

821 (1) The Legislature finds that nonsuicidal self-injurious
822 behaviors in correctional institutions, or acts intended to
823 cause bodily harm but not death, have increased in the
824 correctional environment. Self-injurious behavior may include
825 nonsuicidal self-injury or self-mutilation, such as cutting,
826 reopening wounds, and ingesting or inserting foreign objects or
827 dangerous instruments into the body. These behaviors pose a
828 significant threat to inmates, staff, and, in many cases, the
829 safe and secure operation of the correctional institution. In
830 addition, self-injurious behaviors, coupled with repeated
831 refusals to provide express and informed consent for medical
832 treatment and care, are a significant challenge for correctional

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833 medical and mental health professionals, resulting in higher
834 costs for medical services, and may result in inadvertent
835 mortality in the incarcerated population.

836 (2) In accordance with s. 945.6042, the Legislature finds
837 that an inmate retains the fundamental right of self-
838 determination regarding decisions pertaining to his or her own
839 health, including the right to choose or refuse medical
840 treatment or life-saving medical procedures. However, the
841 inmate's right to privacy and decisionmaking regarding medical
842 treatment may be outweighed by compelling state interests.

843 (3) When an inmate is engaging in active or ongoing self-
844 injurious behavior and has refused to provide express and
845 informed consent for treatment related to the self-injurious
846 behavior, the warden of the facility where the inmate is housed
847 shall consult with the inmate's treating physician regarding the
848 inmate's medical and mental health status, current medical and
849 mental health treatment needs, and competency to provide express
850 and informed consent for treatment. The warden shall also
851 determine whether the inmate's self-injurious behavior presents
852 a danger to the safety of department staff or other inmates or
853 the security, internal order, or discipline of the institution.

854 (a) If the inmate's treating physician determines that the
855 inmate has a mental illness and is incompetent to consent to
856 treatment, the physician shall proceed in accordance with s.
857 945.6042 for any necessary surgical or medical services. If the

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858 inmate is in need of care and treatment as defined in s. 945.42,
859 the inmate shall be referred to a mental health treatment
860 facility for an involuntary examination in accordance with s.
861 945.44.

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

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

879 (b) The inmate shall be provided with a copy of the
880 petition along with the proposed intervention, the basis for the
881 proposed intervention, the names of the testifying experts and
882 witnesses, and the date, time, and location of the hearing.

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883 After considering the medical status of the inmate, public
884 safety, and security concerns presented by transporting the
885 inmate, the court may order that the hearing be conducted by
886 electronic means or in person at the institution or at another
887 location designated by the court. If the hearing is ordered by
888 the court to be conducted at a location other than the
889 institution, the department is authorized to transport the
890 inmate to the location of the hearing.

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

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

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

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

912 1. Preservation of the life of the inmate.

913 2. Prevention of suicide.

914 3. Protection of innocent third parties.

915 4. Maintenance of the ethical integrity of the medical
916 profession.

917 5. Preservation of the security, internal order, or
918 discipline of the institution.

919 6. Rehabilitation of the inmate.

920 7. Any other compelling state interest.

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

931 (5) This section does not repeal by implication any
932 provision of s. 766.103, the Florida Medical Consent Law, or s.

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933 768.13, the Good Samaritan Act. For all purposes, the Florida
934 Medical Consent Law and the Good Samaritan Act shall be
935 considered alternatives to this section.

936 **Section 17. Subsection (2) of section 945.49, Florida**
937 **Statutes, is amended to read:**

938 945.49 Operation and administration.—

939 (2) ~~RULES.—The department, in cooperation with the Mental~~
940 ~~Health Program Office of the Department of Children and~~
941 ~~Families,~~ shall adopt rules necessary for administration of ss.
942 945.40-945.49 in accordance with chapter 120.

943 **Section 18. Section 945.6402, Florida Statutes, is created**
944 **to read:**

945 945.6402 Inmate health care advance directives.—

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

949 (a) "Health care facility" has the same meaning as in s.
950 765.101 and includes any correctional institution or facility
951 where health care is provided.

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

955 (c) "Informed consent" means consent voluntarily given by
956 an inmate after a sufficient explanation and disclosure of the
957 subject matter involved to enable the inmate to have a general

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958 understanding of the treatment or procedure and the medically
959 acceptable alternatives, including the substantial risks and
960 hazards inherent in the proposed treatment or procedures, and to
961 make a knowing health care decision without coercion or undue
962 influence.

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

965 (e) "Ombudsman" means an individual designated and
966 specifically trained by the department to identify conditions
967 that may pose a threat to the rights, health, safety, and
968 welfare of inmates in a health care facility and who may be
969 appointed to serve as a proxy for an inmate who is physically or
970 mentally unable to communicate a willful and knowing health care
971 decision.

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

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

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983 (2) LEGISLATIVE FINDINGS AND INTENT.-

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

994 (b) To ensure that such right is not lost or diminished by
995 virtue of later physical or mental incapacity, the Legislature
996 intends that the procedures specified in chapter 765, and as
997 modified in this section for the institutional health care
998 setting, apply to incarcerated inmates. These procedures should
999 be less expensive and less restrictive than guardianship and
1000 allow an inmate to plan for incapacity by executing a document
1001 or orally designating another person to direct the course of his
1002 or her health care or receive his or her health information, or
1003 both, upon his or her incapacity. These procedures permit a
1004 previously incapacitated inmate to exercise his or her full
1005 right to make health care decisions as soon as the capacity to
1006 make such decisions has been regained.

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1007 (c) In order to ensure that the rights and intentions of
1008 an inmate are respected when the inmate is not able to
1009 participate actively in decisions concerning himself or herself,
1010 and to encourage communication among such inmate, his or her
1011 family, and his or her treating physicians, the Legislature
1012 declares that the laws of this state recognize the right of a
1013 competent incarcerated adult to make an advance directive
1014 instructing his or her physicians to provide, withhold, or
1015 withdraw life-prolonging procedures or to designate another
1016 person to make the health care decision for him or her in the
1017 event that such incarcerated person should become incapacitated
1018 and unable to personally direct his or her health care. It is
1019 further the intent of the Legislature that the department
1020 provide the opportunity for inmates to make advance directives
1021 as specified in this section.

1022 (d) The Legislature further recognizes that incarcerated
1023 inmates may not avail themselves of the opportunity to make an
1024 advance directive or, because of incarceration, may not have a
1025 surrogate, as defined in s. 765.101, willing, able, or
1026 reasonably available to make health care decisions on his or her
1027 behalf. Additionally, because of incarceration, the individuals
1028 designated in s. 765.401 who are eligible to serve as an
1029 appointed proxy may not be reasonably available, willing, or
1030 competent to make health care decisions for the inmate in the
1031 event of incapacity. Thus, it is the intent of the Legislature

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1032 that the department have an efficient process that is less
1033 expensive and less restrictive than guardianship for the
1034 appointment of a proxy to allow for the expedient delivery of
1035 necessary health care to an incarcerated inmate.

1036 (e) This section does not supersede the process for inmate
1037 involuntary mental health treatment in ss. 945.40-945.49.

1038 (3) CAPACITY OF INMATE; PROCEDURE.—

1039 (a) An inmate is presumed to be capable of making health
1040 care decisions for himself or herself unless he or she is
1041 determined to be incapacitated. When an inmate has
1042 decisionmaking capacity, the inmate's wishes are controlling.
1043 Each physician or health care provider must clearly communicate
1044 the treatment plan and any change to the treatment plan before
1045 implementation of the plan or any change to the plan. Incapacity
1046 may not be inferred from an inmate's involuntary hospitalization
1047 for mental illness or from his or her intellectual disability.

1048 (b) If an inmate's capacity to make health care decisions
1049 for himself or herself or provide informed consent is in
1050 question, the inmate's treating physician at the health care
1051 facility where the inmate is located shall evaluate the inmate's
1052 capacity and, if the evaluating physician concludes that the
1053 inmate lacks capacity, enter that evaluation in the inmate's
1054 medical record. If the evaluating physician has a question as to
1055 whether the inmate lacks capacity, another physician shall also
1056 evaluate the inmate's capacity, and if the second physician

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1057 finds that the inmate lacks the capacity to make health care
1058 decisions for himself or herself or provide informed consent,
1059 both physicians' evaluations shall be entered in the inmate's
1060 medical record.

1061 (c) If the inmate is found to be incapacitated and has
1062 designated a health care surrogate in accordance with chapter
1063 765, the institution's or facility's health care staff shall
1064 notify the surrogate and proceed as specified in chapter 765. If
1065 the incapacitated inmate has not designated a health care
1066 surrogate, the health care facility shall appoint a proxy to
1067 make health care decisions for the inmate as specified in this
1068 section.

1069 (d) A determination made pursuant to this section that an
1070 inmate lacks the capacity to make health care decisions for
1071 himself or herself may not be construed as a finding that an
1072 inmate lacks capacity for any other purpose.

1073 (4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.-

1074 (a) In accordance with chapter 765, the department shall
1075 offer inmates the opportunity to execute an advance directive as
1076 defined in s. 765.101.

1077 (b) The department shall provide to each inmate written
1078 information concerning advance directives and necessary forms to
1079 allow inmates to execute an advance directive. The department
1080 and its health care providers shall document in the inmate's
1081 medical records whether the inmate has executed an advance

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1082 directive. Neither the department nor its health care providers
1083 may require an inmate to execute an advance directive using the
1084 department's forms. The inmate's advance directive shall travel
1085 with the inmate within the department as part of the inmate's
1086 medical record.

1087 (c) An advance directive may be amended or revoked at any
1088 time by a competent inmate by means of:

1089 1. A signed, dated writing of intent to amend or revoke;

1090 2. The physical cancellation or destruction of the advance
1091 directive by the inmate or by another person in the inmate's
1092 presence and at the inmate's direction;

1093 3. An oral expression of intent to amend or revoke; or

1094 4. A subsequently executed advance directive that is
1095 materially different from a previously executed advance
1096 directive.

1097 (5) PROXY.—

1098 (a) If an incapacitated inmate has not executed an advance
1099 directive, or designated a health care surrogate in accordance
1100 with the procedures specified in chapter 765 or the designated
1101 health care surrogate is no longer available to make health care
1102 decisions, health care decisions may be made for the inmate by
1103 any of the individuals specified in the priority order provided
1104 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts
1105 to locate a proxy from the classes specified in s.

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1106 765.401(1)(a)-(g) shall be recorded in the inmate's medical
1107 file.

1108 (b) If there are no individuals as specified in s.
1109 765.401(1)(a)-(g) available, willing, or competent to act on
1110 behalf of the inmate, and the inmate is housed in a correctional
1111 institution or facility where health care is provided in a
1112 nonhospital setting, the warden of the institution where the
1113 inmate is housed, or the warden's designee, shall consult with
1114 the Assistant Secretary for Health Services or his or her
1115 designee who shall appoint a department ombudsman to serve as
1116 the proxy. This appointment terminates when the inmate regains
1117 capacity or is no longer incarcerated in the custody of the
1118 department. In accordance with chapter 765 and as provided in
1119 this section, decisions to withhold or withdraw life-prolonging
1120 procedures will be reviewed by the department's proxy review
1121 team for compliance with chapter 765 and the requirements of
1122 this section.

1123 (c) The ombudsman appointed to serve as the proxy is
1124 authorized to request the assistance of the treating physician
1125 and, upon request, a second physician not involved in the
1126 inmate's care to assist the proxy in evaluating the inmate's
1127 treatment.

1128 (d) In accordance with chapter 765, any health care
1129 decision made by any appointed proxy under this section must be
1130 based on the proxy's informed consent and on the decision that

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1131 the proxy reasonably believes the inmate would have made under
1132 the circumstances. If there is no indication of what decision
1133 the inmate would have made, the proxy may consider the inmate's
1134 best interest in deciding that proposed treatments are to be
1135 withheld or that treatments currently in effect are to be
1136 withdrawn.

1137 (e) Before exercising the incapacitated inmate's rights to
1138 select or decline health care, the proxy must comply with ss.
1139 765.205 and 765.305, except that any proxy's decision to
1140 withhold or withdraw life-prolonging procedures must be
1141 supported by clear and convincing evidence that the decision
1142 would have been the one the inmate would have made had he or she
1143 been competent or, if there is no indication of what decision
1144 the inmate would have made, that the decision is in the inmate's
1145 best interest.

1146 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10
1147 and 45 C.F.R. part 164, subpart E, relevant protected health
1148 information and mental health and medical records of an
1149 incapacitated inmate may be disclosed to a proxy appointed to
1150 make health care decisions for an inmate.

1151 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee
1152 of the department may apply reasonable physical force upon an
1153 incapacitated inmate to administer medical treatment only by or
1154 under the clinical supervision of a physician or his or her

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1155 designee and only to carry out a health care decision made in
1156 accordance with this section and chapter 765.

1157 (7) IMMUNITY FROM LIABILITY.—A department health care
1158 provider, ombudsman, or other employee who acts under the
1159 direction of a health care provider as authorized in this
1160 section or chapter 765 is not subject to criminal prosecution or
1161 civil liability and may not be deemed to have engaged in
1162 unprofessional conduct as a result of carrying out a health care
1163 decision made in accordance with this section or chapter 765 on
1164 an inmate's behalf.

1165 **Section 19. Section 947.02, Florida Statutes, is amended**
1166 **to read:**

1167 947.02 Florida Commission on Offender Review; members,
1168 appointment.—

1169 ~~(1) Except as provided in s. 947.021, The members of the~~
1170 ~~Florida Commission on Offender Review shall be directly~~
1171 ~~appointed by the Governor and Cabinet from a list of eligible~~
1172 ~~applicants submitted by a parole qualifications committee. The~~
1173 ~~appointments of members of the commission shall be certified to~~
1174 ~~the Senate by the Governor and Cabinet for confirmation, and the~~
1175 ~~membership of the commission shall include representation from~~
1176 ~~minority persons as defined in s. 288.703.~~

1177 (2) If the Legislature decreases the membership of the
1178 commission, all commission member terms of office shall expire
1179 and new members of the commission must be appointed in

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1180 accordance with subsection (1). Members appointed to the
1181 commission may be selected from incumbents. A parole
1182 ~~qualifications committee shall consist of five persons who are~~
1183 ~~appointed by the Governor and Cabinet. One member shall be~~
1184 ~~designated as chair by the Governor and Cabinet. The committee~~
1185 ~~shall provide for statewide advertisement and the receiving of~~
1186 ~~applications for any position or positions on the commission and~~
1187 ~~shall devise a plan for the determination of the qualifications~~
1188 ~~of the applicants by investigations and comprehensive~~
1189 ~~evaluations, including, but not limited to, investigation and~~
1190 ~~evaluation of the character, habits, and philosophy of each~~
1191 ~~applicant. Each parole qualifications committee shall exist for~~
1192 ~~2 years. If additional vacancies on the commission occur during~~
1193 ~~this 2-year period, the committee may advertise and accept~~
1194 ~~additional applications; however, all previously submitted~~
1195 ~~applications shall be considered along with the new applications~~
1196 ~~according to the previously established plan for the evaluation~~
1197 ~~of the qualifications of applicants.~~

1198 ~~(3) Within 90 days before an anticipated vacancy by~~
1199 ~~expiration of term pursuant to s. 947.03 or upon any other~~
1200 ~~vacancy, the Governor and Cabinet shall appoint a parole~~
1201 ~~qualifications committee if one has not been appointed during~~
1202 ~~the previous 2 years. The committee shall consider applications~~
1203 ~~for the commission seat, including the application of an~~
1204 ~~incumbent commissioner if he or she applies, according to~~

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1205 ~~subsection (2). The committee shall submit a list of three~~
 1206 ~~eligible applicants, which may include the incumbent if the~~
 1207 ~~committee so decides, without recommendation, to the Governor~~
 1208 ~~and Cabinet for appointment to the commission. In the case of an~~
 1209 ~~unexpired term, the appointment must be for the remainder of the~~
 1210 ~~unexpired term and until a successor is appointed and qualified.~~
 1211 ~~If more than one seat is vacant, the committee shall submit a~~
 1212 ~~list of eligible applicants, without recommendation, containing~~
 1213 ~~a number of names equal to three times the number of vacant~~
 1214 ~~seats; however, the names submitted may not be distinguished by~~
 1215 ~~seat, and each submitted applicant shall be considered eligible~~
 1216 ~~for each vacancy.~~

1217 ~~(4) Upon receiving a list of eligible persons from the~~
 1218 ~~parole qualifications committee, the Governor and Cabinet may~~
 1219 ~~reject the list. If the list is rejected, the committee shall~~
 1220 ~~reinitiate the application and examination procedure according~~
 1221 ~~to subsection (2).~~

1222 ~~(5) Section 120.525 and chapters 119 and 286 apply to all~~
 1223 ~~activities and proceedings of a parole qualifications committee.~~

1224 **Section 20.** Section 947.021, Florida Statutes, is
 1225 repealed.

1226
 1227 -----

1228 **T I T L E A M E N D M E N T**

1229 Remove lines 6-75 and insert:

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1230 disciplinary reports; amending s. 95.11, F.S.; providing for a
1231 1-year period of limitation for bringing certain actions
1232 relating to the condition of confinement of prisoners; creating
1233 s. 760.701, F.S.; defining the term "prisoner"; requiring
1234 exhaustion of administrative remedies before certain actions
1235 concerning confinement of prisoners may be brought; providing
1236 for dismissal of certain actions involving prisoner confinement
1237 in certain circumstances; requiring a showing of physical injury
1238 or the commission of a certain act as a condition precedent for
1239 bringing certain actions relating to prisoner confinement;
1240 specifying a time limitation period for bringing an action
1241 concerning any condition of confinement; amending s. 775.087,
1242 F.S.; providing that prison terms for certain offenses committed
1243 in conjunction with another felony offense may be sentenced to
1244 be served consecutively; amending ss. 922.10 and 922.105, F.S.;;
1245 revising provisions concerning methods of execution of death
1246 sentences; amending s. 934.425, F.S.; exempting persons working
1247 for the Department of Corrections or the Department of Juvenile
1248 Justice, or persons authorized pursuant to a court order, from
1249 provisions regulating the use of tracking devices or tracking
1250 applications; amending s. 945.41, F.S.; revising legislative
1251 intent; revising provisions relating to mental health treatment
1252 for inmates; providing that an inmate must give his or her
1253 express and informed consent to such treatment; specifying
1254 information an inmate must receive regarding treatment;

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1255 | authorizing the warden to authorize certain emergency medical
1256 | treatment under the direction of the inmate's attending
1257 | physician under certain circumstances; amending s. 945.42, F.S.;
1258 | revising and providing definitions; amending s. 945.43, F.S.;
1259 | revising provisions concerning involuntary examinations;
1260 | amending s. 945.44, F.S.; revising provisions concerning
1261 | involuntary placement and treatment of an inmate in a mental
1262 | health treatment facility; repealing s. 945.45 F.S., relating to
1263 | continued placement of inmates in mental health treatment
1264 | facilities; amending s. 945.46, F.S.; providing requirements for
1265 | filing petitions for involuntary inpatient placement for certain
1266 | inmates; authorizing the court to order alternative means and
1267 | venues for certain hearings; requiring, rather than authorizing,
1268 | inmates to be transported to the nearest receiving facility in
1269 | certain circumstances; amending s. 945.47, F.S.; specifying
1270 | purposes for which an inmate's mental health treatment records
1271 | may be provided to the Florida Commission on Offender Review and
1272 | the Department of Children and Families; authorizing such
1273 | records to be provided to certain facilities upon request;
1274 | amending s. 945.48, F.S.; substantially rewording provisions
1275 | relating to emergency treatment orders and use of force and
1276 | providing requirements therefore; providing requirements for
1277 | emergency and psychotropic medications and use of force;
1278 | creating s. 945.485, F.S.; providing legislative findings;
1279 | providing requirements for management and treatment for an

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1280 inmate's self-injurious behaviors; requiring facility wardens to
1281 consult with an inmate's treating physician in certain
1282 circumstances and make certain determinations; providing for
1283 petitions to compel an inmate to submit to medical treatment in
1284 certain circumstances; providing construction; amending s.
1285 945.49, F.S.; deleting a requirement that the Department of
1286 Corrections adopt certain rules in cooperation with the Mental
1287 Health Program Office of the Department of Children and
1288 Families; creating s. 945.6402, F.S.; providing definitions;
1289 providing legislative findings and intent; providing
1290 requirements for inmate capacity, health care advance
1291 directives, and proxies; authorizing the use of force on
1292 incapacitated inmates in certain circumstances; providing
1293 immunity from liability for certain persons in certain
1294 circumstances; amending s. 947.02, F.S.; revising the manner in
1295 which the membership of the Florida Commission on Offender
1296 Review is appointed; repealing s. 947.021, F.S., relating to
1297 expedited appointments of the Florida Commission on Offender
1298 Review; amending s. 947.12,