

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

26 use of drones; amending s. 945.41, F.S.; revising
27 provisions relating to mental health treatment for
28 inmates; amending s. 945.42, F.S.; revising and
29 providing definitions; amending s. 945.43, F.S.;
30 revising provisions concerning involuntary
31 examinations; amending s. 945.44, F.S.; revising
32 provisions concerning placement and treatment of an
33 inmate in a mental health treatment facility;
34 repealing s. 945.45 F.S., relating to continued
35 placement of inmates in mental health treatment
36 facilities; amending s. 945.46, F.S.; providing
37 requirements for filing petitions for involuntary
38 inpatient placement for certain inmates; authorizing
39 the court to order alternative means and venues for
40 certain hearings; requiring, rather than authorizing,
41 inmates to be transported to the nearest receiving
42 facility in certain circumstances; amending s. 945.47,
43 F.S.; specifying purposes for which an inmate's mental
44 health treatment records may be provided to the
45 Florida Commission on Offender Review and the
46 Department of Children and Families; authorizing such
47 records to be provided to certain facilities upon
48 request; amending s. 945.48, F.S.; substantially
49 rewording provisions relating to emergency treatment
50 orders and use of force and providing requirements

51 therefore; providing requirements for emergency and
52 psychotropic medications and use of force; creating s.
53 945.485, F.S.; providing legislative findings;
54 providing requirements for management and treatment
55 for self-injurious behaviors; requiring facility
56 wardens to consult with an inmate's treating physician
57 in certain circumstances and make certain
58 determinations; providing for petitions to compel an
59 inmate to submit to medical treatment in certain
60 circumstances; providing construction; amending s.
61 945.49, F.S.; removing a requirement that the
62 Department of Corrections adopt certain rules in
63 cooperation with the Mental Health Program Office of
64 the Department of Children and Families; creating s.
65 945.6402, F.S.; providing definitions; providing
66 legislative findings and intent; providing
67 requirements for inmate capacity, health care advance
68 directives, and proxies; authorizing the use of force
69 on incapacitated inmates in certain circumstances;
70 providing immunity from liability for certain persons
71 in certain circumstances; amending s. 947.02, F.S.;
72 changing the membership of the Florida Commission on
73 Offender Review; amending s. 947.021, F.S.; revising
74 provisions for expedited appointment of commission
75 members in certain circumstances; amending s. 947.12,

76 F.S.; conforming provisions to changes made by the
 77 act; amending s. 957.04, F.S.; revising requirements
 78 for contracting for certain services; amending s.
 79 957.09, F.S.; removing a provision relating to
 80 minority business enterprises; providing an effective
 81 date.

82

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

84

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

87 57.085 Deferral of prepayment of court costs and fees for
 88 indigent prisoners.—

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

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

95 95.11 Limitations other than for the recovery of real
 96 property.—Actions other than for recovery of real property shall
 97 be commenced as follows:

98 (2) WITHIN FIVE YEARS.—

99 (b) A legal or equitable action on a contract, obligation,
 100 or liability founded on a written instrument, except for an

HB 903

2025

101 action to enforce a claim against a payment bond, which shall be
102 governed by the applicable provisions of paragraph (6) (e), s.
103 255.05(10), s. 337.18(1), or s. 713.23(1) (e), and except for an
104 action for a deficiency judgment governed by paragraph (6) (g)
105 ~~(6) (h)~~.

106 (6) WITHIN ONE YEAR.—

107 (f) Except for actions described in subsection (9), or a
108 petition challenging a criminal conviction, all petitions;
109 extraordinary writs; tort actions, including those under s.
110 768.28(14); or other actions which concern any condition of
111 confinement of a prisoner ~~a petition for extraordinary writ,~~
112 ~~other than a petition challenging a criminal conviction,~~ filed
113 by or on behalf of a prisoner as defined in s. 57.085.

114 ~~(g) Except for actions described in subsection (9), an~~
115 ~~action brought by or on behalf of a prisoner, as defined in s.~~
116 ~~57.085, relating to the conditions of the prisoner's~~
117 ~~confinement.~~

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

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

126 760.701 Lawsuits by prisoners.-

127 (1) For the purposes of this section, the term "prisoner"
128 means any person incarcerated or detained in any jail, prison,
129 or other correctional facility, who is accused of, convicted of,
130 sentenced for, or adjudicated delinquent for, violations of
131 criminal law or the terms and conditions of parole, probation,
132 pretrial release, or diversionary program.

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

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

146 (4) An action may not be brought in state court by or on
147 behalf of a prisoner relating to the conditions of the
148 prisoner's confinement under 42 U.S.C. s. 1983, or any state
149 tort action, for mental or emotional injury suffered while in
150 custody without a prior showing of physical injury or the

151 commission of a sexual act as defined in 18 U.S.C. s. 2246(2).

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

155 **Section 4. Paragraph (d) of subsection (2) of section**
 156 **775.087, Florida Statutes, is amended, paragraph (e) is added to**
 157 **that subsection, and paragraph (a) of that subsection is**
 158 **republished, to read:**

159 775.087 Possession or use of weapon; aggravated battery;
 160 felony reclassification; minimum sentence.—

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

- 164 a. Murder;
- 165 b. Sexual battery;
- 166 c. Robbery;
- 167 d. Burglary;
- 168 e. Arson;
- 169 f. Aggravated battery;
- 170 g. Kidnapping;
- 171 h. Escape;
- 172 i. Aircraft piracy;
- 173 j. Aggravated child abuse;
- 174 k. Aggravated abuse of an elderly person or disabled
- 175 adult;

176 1. Unlawful throwing, placing, or discharging of a
 177 destructive device or bomb;
 178 m. Carjacking;
 179 n. Home-invasion robbery;
 180 o. Aggravated stalking;
 181 p. Trafficking in cannabis, trafficking in cocaine,
 182 capital importation of cocaine, trafficking in illegal drugs,
 183 capital importation of illegal drugs, trafficking in
 184 phencyclidine, capital importation of phencyclidine, trafficking
 185 in methaqualone, capital importation of methaqualone,
 186 trafficking in amphetamine, capital importation of amphetamine,
 187 trafficking in flunitrazepam, trafficking in gamma-
 188 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 189 trafficking in Phenethylamines, or other violation of s.
 190 893.135(1);
 191 q. Possession of a firearm by a felon; or
 192 r. Human trafficking
 193
 194 and during the commission of the offense, such person actually
 195 possessed a "firearm" or "destructive device" as those terms are
 196 defined in s. 790.001, shall be sentenced to a minimum term of
 197 imprisonment of 10 years, except that a person who is convicted
 198 for possession of a firearm by a felon or burglary of a
 199 conveyance shall be sentenced to a minimum term of imprisonment
 200 of 3 years if such person possessed a "firearm" or "destructive

201 device" during the commission of the offense. However, if an
202 offender who is convicted of the offense of possession of a
203 firearm by a felon has a previous conviction of committing or
204 attempting to commit a felony listed in s. 775.084(1)(b)1. and
205 actually possessed a firearm or destructive device during the
206 commission of the prior felony, the offender shall be sentenced
207 to a minimum term of imprisonment of 10 years.

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

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

225 (d) It is the intent of the Legislature that offenders who

226 actually possess, carry, display, use, threaten to use, or
227 attempt to use firearms or destructive devices be punished to
228 the fullest extent of the law, and the minimum terms of
229 imprisonment imposed pursuant to this subsection shall be
230 imposed for each qualifying felony count for which the person is
231 convicted. The court shall impose any term of imprisonment
232 provided for in this subsection consecutively ~~to any other term~~
233 ~~of imprisonment imposed for any other felony offense.~~

234 (e) If a conviction enumerated in subparagraph (a)1. is
235 committed in conjunction with any other felony offense, the
236 court may impose any term of imprisonment provided for in this
237 subsection consecutively to any other term of imprisonment
238 imposed for any other felony offense.

239 **Section 5. Section 922.10, Florida Statutes, is amended to**
240 **read:**

241 922.10 Execution of death sentence; executioner.—A death
242 sentence shall be executed by electrocution, ~~or~~ lethal
243 injection, or a method not deemed unconstitutional in accordance
244 with s. 922.105. The warden of the state prison shall designate
245 the executioner. The warrant authorizing the execution shall be
246 read to the convicted person immediately before execution.

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

249 922.105 Execution of death sentence; prohibition against
250 reduction of death sentence as a result of determination that a

251 method of execution is unconstitutional.—

252 (3) If electrocution or lethal injection is held to be
253 unconstitutional by the Florida Supreme Court under the State
254 Constitution, or held to be unconstitutional by the United
255 States Supreme Court under the United States Constitution, or if
256 the United States Supreme Court declines to review any judgment
257 holding a method of execution to be unconstitutional under the
258 United States Constitution made by the Florida Supreme Court or
259 the United States Court of Appeals that has jurisdiction over
260 Florida, or if the acquisition of chemicals necessary for lethal
261 injection becomes impossible or impractical, all persons
262 sentenced to death for a capital crime shall be executed by a
263 method not deemed unconstitutional ~~any constitutional method of~~
264 ~~execution~~.

265 **Section 7. Paragraphs (b) through (d) of subsection (1) of**
266 **section 934.425, Florida Statutes, are redesignated as**
267 **paragraphs (c) through (e), respectively, a new paragraph (b) is**
268 **added to that subsection, paragraphs (b) through (e) of**
269 **subsection (4) are redesignated as paragraphs (c) through (f),**
270 **respectively, and a new paragraph (b) is added to that**
271 **subsection, to read:**

272 934.425 Installation or use of tracking devices or
273 tracking applications; exceptions; penalties.—

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

275 (b) "Confinement center" means a jail, center, facility,

276 or institution designed to house a person or confine a person's
 277 movements in accordance with chapter 394, chapter 908, chapter
 278 941, chapter 944, chapter 945, chapter 950, chapter 951, chapter
 279 957, chapter 958, chapter 984, or chapter 985.

280 (4) This section does not apply to:

281 (b) A person who while working for or at a confinement
 282 center installs, places, or uses a tracking device or tracking
 283 application on a person within their care, custody, or control
 284 as part of his or her employment.

285 **Section 8. Section 945.41, Florida Statutes, is amended to**
 286 **read:**

287 945.41 Mental health treatment for inmates; legislative
 288 intent of ss. 945.40-945.49.—

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

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

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

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

306 (2) INDIVIDUAL DIGNITY AND TREATMENT.—

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

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

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

322 (d) ~~(1)~~ Inmates in the custody of the department who have
323 mental illnesses that require hospitalization and intensive
324 mental health ~~psychiatric~~ inpatient treatment and services or
325 care shall be offered ~~receive~~ appropriate treatment or care in

326 an inpatient setting ~~Department of Corrections mental health~~
327 ~~treatment facilities~~ designated for that purpose. Inmates who
328 have mental illnesses that require intensive hospitalization-
329 level mental health inpatient treatment and services shall be
330 transferred to a department mental health treatment facility
331 designated for that purpose ~~The Department of Corrections shall~~
332 ~~provide mental health services to inmates committed to it and~~
333 ~~may contract with any entities, persons, or agencies qualified~~
334 ~~to provide such services.~~

335 (e) (2) Mental health treatment facilities shall be secure
336 and adequately equipped and staffed for the provision of mental
337 health treatment and services. Inmates shall be offered the
338 least restrictive appropriate available treatment and services
339 based on their assessed needs and best interests and consistent
340 with improvement of their condition for facilitation of
341 appropriate adjustment within the correctional environment
342 ~~services and that, to the extent possible, such services be~~
343 ~~provided in the least restrictive manner consistent with optimum~~
344 ~~improvement of the inmate's condition.~~

345 (3) EXPRESS AND INFORMED CONSENT.—

346 (a) A mentally competent inmate offered mental health
347 treatment within the department shall give his or her express
348 and informed consent for such treatment. Before giving such
349 consent, the following information shall be provided and
350 explained in plain language to the inmate:

351 1. The proposed treatment.

352 2. The purpose of the treatment.

353 3. The common risks, benefits, and side effects of the
354 treatment and the specific dosage range for a medication, if
355 applicable.

356 4. Alternative treatment modalities.

357 5. The approximate length of treatment.

358 6. The potential effects of stopping treatment.

359 7. How treatment will be monitored.

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

364 (b) Inmates who are determined to be incompetent to
365 consent to treatment shall receive treatment deemed to be
366 necessary for their appropriate care and for the safety of the
367 inmate or others in accordance with the procedures established
368 in ss. 945.40-945.49.

369 (4)-(3) PAROLE.-Inmates who are transferred to any facility
370 for the purpose of mental health treatment and services shall be
371 given consideration for parole and be eligible for release by
372 reason of gain-time allowances as provided in s. 944.291 and
373 release by expiration of sentence, consistent with guidelines
374 established for that purpose by the department.

375 (5)-(4) YOUTHFUL OFFENDERS.-Any inmate sentenced as a

376 youthful offender, or designated as a youthful offender by the
377 department under chapter 958, who is transferred pursuant to
378 this act to a mental health treatment facility shall be
379 separated from other inmates, if necessary, as determined by the
380 warden of the mental health treatment facility.

381 (6) ~~(5)~~ TREATMENT FACILITIES.—The department may designate
382 mental health treatment facilities for adult, youthful, and
383 female offenders or may contract with other appropriate
384 entities, persons, or agencies for such services.

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

396 **Section 9. Section 945.42, Florida Statutes, is amended to**
397 **read:**

398 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
399 945.40-945.49, the following terms shall have the meanings
400 ascribed to them, unless the context shall clearly indicate

401 otherwise:

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

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

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

417 (4) "Express and informed consent" means consent
418 voluntarily given in writing, by a competent inmate, after
419 sufficient explanation and disclosure of the subject matter
420 involved, to enable the inmate to make a knowing and willful
421 decision without any element of force, fraud, deceit, duress, or
422 other form of constraint or coercion.

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

425 (a) In danger of serious physical harm resulting from the

426 inmate's failure to provide for his or her essential physical
427 needs of food, clothing, hygiene, health, or safety without the
428 assistance of others; or

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

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

441 ~~(4) "Director" means the Director for Mental Health~~
442 ~~Services of the Department of Corrections or his or her~~
443 ~~designee.~~

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

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

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

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

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

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

464 ~~(7)-(6)~~ "In need of care and treatment" means that an
465 inmate has a mental illness for which inpatient services in a
466 mental health treatment facility are necessary and ~~that, but for~~
467 ~~being isolated in a more restrictive and secure housing~~
468 ~~environment,~~ because of the mental illness:

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

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

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

480 (b) The inmate is incompetent to consent to treatment and
481 is unable or is refusing to provide express and informed consent
482 to treatment.

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

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

489 ~~(8)-(7)~~ "Inmate" means any person committed to the custody
490 of the Department of Corrections.

491 (9) "Involuntary examination" means a psychiatric
492 examination performed at a mental health treatment facility to
493 determine whether an inmate should be placed in the mental
494 health treatment facility for inpatient mental health treatment
495 and services.

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

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

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

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

509 ~~(11)(8)~~ "Mental health treatment facility" means any
510 extended treatment or hospitalization-level unit within the
511 corrections system which the Assistant Secretary for Health
512 Services of the department specifically designates by rule to
513 provide acute mental health ~~psychiatric~~ care and which may
514 include involuntary treatment and therapeutic intervention in
515 contrast to less intensive levels of care such as outpatient
516 mental health care, transitional mental health care, or crisis
517 stabilization care. The term does not include a forensic
518 facility as defined in s. 916.106.

519 ~~(12)(9)~~ "Mental illness" or "mentally ill" means an
520 impairment of the mental or emotional processes that exercise
521 conscious control of one's actions or of the ability to perceive
522 or understand reality, which impairment substantially interferes
523 with the person's ability to meet the ordinary demands of
524 living. However, for the purposes of transferring an inmate to a
525 mental health treatment facility, the term does not include a

526 developmental disability as defined in s. 393.063, simple
527 intoxication, or conditions manifested only by antisocial
528 behavior or substance abuse addiction. However, an individual
529 who is developmentally disabled may also have a mental illness.

530 (13)~~(10)~~ "Psychiatrist" means a medical practitioner
531 licensed pursuant to chapter 458 or chapter 459 who has
532 primarily diagnosed and treated nervous and mental disorders for
533 a period of not less than 3 years inclusive of psychiatric
534 residency.

535 (14)~~(11)~~ "Psychological professional" means a behavioral
536 practitioner who has an approved doctoral degree in psychology
537 as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by
538 the department or who is licensed as a psychologist pursuant to
539 chapter 490.

540 (15)~~(12)~~ "Secretary" means the Secretary of Corrections.

541 (16)~~(13)~~ "Transitional mental health care" means a level
542 of care that is more intensive than outpatient care, but less
543 intensive than crisis stabilization care, and is characterized
544 by the provision of traditional mental health treatment and
545 services ~~treatments~~ such as group and individual therapy,
546 activity therapy, recreational therapy, and psychotropic
547 medications in the context of a secure, structured residential
548 setting. Transitional mental health care is indicated for an
549 inmate ~~a person~~ with chronic or residual symptomatology who does
550 not require crisis stabilization care or acute mental health

551 ~~psychiatric~~ care, but whose impairment in functioning
552 nevertheless renders him or her incapable of adjusting
553 satisfactorily within the general inmate population.

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

564 ~~(18)-(14)~~ "Warden" means the warden of a state corrections
565 facility or his or her designee.

566 **Section 10. Section 13. Section 945.43, Florida Statutes,**
567 **is amended to read:**

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

570 945.43 Involuntary examination.-

571 (1) If there is reason to believe that an inmate has a
572 mental illness and the inmate is in need of care and treatment,
573 the inmate's treating clinician may refer the inmate to a mental
574 health treatment facility for an involuntary examination. Upon
575 referral, the warden of the facility where the inmate is housed

576 shall transfer the inmate to a mental health treatment facility.

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

581 (3) If, after the examination, the inmate is determined to
582 be in need of care and treatment, the psychiatrist shall propose
583 a recommended course of treatment that is essential to the care
584 of the inmate and the warden shall initiate proceedings for
585 placement of the inmate in the mental health treatment facility
586 and for involuntary treatment of the inmate as specified in s.
587 945.44. If the inmate is not in need of care and treatment, he
588 or she shall be transferred out of the mental health treatment
589 facility and provided with appropriate mental health services.

590 (4) The involuntary examination and initiation of court
591 proceedings for the placement and applicable involuntary
592 treatment of the inmate in the mental health treatment facility
593 shall be completed within 10 calendar days after arrival.

594 (5) The inmate may remain in the mental health treatment
595 facility pending a hearing after the timely filing of a petition
596 as described in s. 945.44. Pending a hearing, necessary
597 emergency treatment may be provided in the mental health
598 treatment facility upon the written order of a physician as
599 provided in s. 945.48.

600

601 **Section 11. Section 945.44, Florida Statutes, is amended**
 602 **to read:**

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

605 945.44 Placement and treatment of an inmate in a mental
 606 health treatment facility.—

607 (1) CRITERIA.—An inmate may be placed in a mental health
 608 treatment facility if he or she is mentally ill and is in need
 609 of care and treatment. Involuntary mental health treatment that
 610 is deemed to be essential for the appropriate care of the inmate
 611 and the safety of the inmate or others may be provided at the
 612 mental health treatment facility if the inmate is either gravely
 613 disabled or presents a likelihood of serious harm.

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

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

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

626 petition along with the proposed treatment, the basis for the
627 proposed treatment, the names of the examining experts, and the
628 date, time, and location of the hearing. After considering the
629 public safety and security concerns presented by transporting
630 the inmate or in conducting onsite hearings, the court may order
631 that the hearing be conducted by electronic means or in person
632 at the facility or at another location designated by the court.
633 If the hearing is ordered by the court to be conducted at a
634 location other than the facility, the department is authorized
635 to transport the inmate to the location of the hearing.

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

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

650 (e) The court may waive the presence of the inmate at the

651 hearing if the waiver is consistent with the best interests of
652 the inmate and the inmate's counsel does not object. One of the
653 inmate's physicians whose opinion supported the petition shall
654 appear as a witness at the hearing.

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

660 (g) On the issue of whether the court should authorize
661 treatment for which an inmate is unable or has refused to
662 provide express and informed consent, the court shall determine
663 by clear and convincing evidence whether:

664 1. The inmate is mentally ill.

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

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

669 4. The inmate is gravely disabled or poses a likelihood of
670 serious harm.

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

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

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

675 2. The probability of adverse side effects.

676 3. The prognosis for the inmate without treatment.

677 4. The prognosis for the inmate with treatment.

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

684 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order
685 authorizing involuntary placement and treatment shall allow such
686 placement and treatment for a period not to exceed 6 months
687 following the date of the order. Unless the court is notified in
688 writing that the inmate has been discharged from the mental
689 health treatment facility because he or she is no longer in need
690 of care and treatment, has been transferred to another
691 institution of the department, or has been released from the
692 department's custody, the warden shall, before the expiration of
693 the initial order, file a notice with the court to set a status
694 hearing for an order authorizing the continuation of placement
695 and treatment for another period not to exceed 6 months. This
696 procedure shall be repeated until the inmate is no longer in
697 need of care and treatment. Placement and treatment may be
698 continued pending a hearing after the timely filing of any
699 petition.

700 (5) COPIES OF ORDERS.—The court shall provide a copy of

701 its order authorizing placement and treatment along with all
702 supporting documentation relating to the inmate's condition to
703 the warden of the mental health treatment facility.

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

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

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

713 945.46 Initiation of involuntary placement proceedings
714 with respect to a mentally ill inmate scheduled for release.—

715 (3) The warden shall file petitions for involuntary
716 inpatient placement for inmates scheduled to be released in the
717 court in the county where the inmate is located. Upon filing,
718 the clerk of the court shall provide copies to the Department of
719 Children and Families, the inmate, and the state attorney and
720 public defender of the judicial circuit in which the inmate is
721 located. A fee may not be charged for the filing of a petition
722 under chapter 394. Within 1 court working day after the filing
723 of a petition for involuntary inpatient placement, the court
724 shall appoint the public defender to represent the inmate who is
725 the subject of the petition, unless the inmate is otherwise

726 represented by counsel. The clerk of the court shall immediately
727 notify the public defender of such appointment. Any attorney
728 representing the inmate shall have access to the inmate,
729 witnesses, and records relevant to the presentation of the
730 patient's case and shall represent the interests of the inmate,
731 regardless of the source of payment to the attorney. The state
732 attorney for the circuit in which the inmate is located shall
733 represent the state, rather than the petitioning warden, as the
734 real party in interest in the proceeding. The remainder of the
735 proceedings shall be governed by chapter 394.

736 (4) After considering the public safety and security
737 concerns presented by transporting a mentally ill inmate to
738 electronic means, at the facility in person, or at another
739 location designated by the court. If the hearing is ordered by
740 the court to be conducted at a location other than the facility,
741 the department is authorized to transport the inmate to the
742 location of the hearing.

743 (5)-(3)- The department may transport an individual who is
744 being released from its custody to a receiving or mental health
745 treatment facility for involuntary examination or placement.
746 Such transport shall be made to a facility that is specified by
747 the Department of Children and Families as able to meet the
748 specific needs of the individual. If the Department of Children
749 and Families does not specify a facility, transport shall ~~may~~ be
750 made to the nearest receiving facility.

751 **Section 14. Section 945.47, Florida Statutes, is amended**
752 **to read:**

753 945.47 Discharge of inmate from mental health treatment.-

754 (1) An inmate who has been placed in a mental health
755 treatment facility ~~transferred~~ for the purpose of mental health
756 treatment shall be discharged from treatment by the warden under
757 the following conditions:

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

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

767 (2) At any time that an inmate who has received mental
768 health treatment while in the custody of the department becomes
769 eligible for release under supervision or upon end of sentence,
770 a record of the inmate's mental health treatment may be provided
771 to the Florida Commission on Offender Review and to the
772 Department of Children and Families to arrange postrelease
773 aftercare placement and to prospective recipient inpatient
774 health care or residential facilities upon request. The record
775 shall include, at a minimum, a summary of the inmate's

776 diagnosis, length of stay in treatment, clinical history,
777 prognosis, prescribed medication, treatment plan, and
778 recommendations for aftercare services.

779 **Section 15. Section 18. Section 945.48, Florida Statutes,**
780 **is amended to read:**

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

783 945.48 Emergency treatment orders and use of force.—

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

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

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

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

801 not be effective. If after the 72-hour period the inmate has not
802 given express and informed consent to the medication initially
803 refused, the inmate's treating physician shall refer the inmate
804 to a mental health treatment facility for an involuntary
805 examination in accordance with the procedures described in s.
806 945.43. Upon such referral, the warden shall, within 48 hours,
807 excluding weekends and legal holidays, transfer the inmate to a
808 mental health treatment facility. Upon transfer of the inmate
809 for an involuntary examination, the emergency treatment order
810 may be continued upon the written order of a physician as long
811 as the physician has determined that the emergency continues to
812 present a danger to the safety of the inmate or others and the
813 criteria described in this subsection are satisfied. If
814 psychotropic medication is still recommended after the
815 emergency, it may only be administered after following the
816 procedures outlined in s. 945.44.

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

826 **Section 16. Section 945.485, Florida Statutes, is created**
827 **to read:**

828 945.485 Management and treatment for self-injurious
829 behaviors.-

830 (1) The Legislature finds that nonsuicidal self-injurious
831 behaviors in correctional institutions, or acts intended to
832 cause bodily harm but not death, have increased in the
833 correctional environment. Self-injurious behavior may include
834 nonsuicidal self-injury or self-mutilation, such as cutting,
835 reopening wounds, and ingesting or inserting foreign objects or
836 dangerous instruments into the body. These behaviors pose a
837 significant threat to inmates, staff, and, in many cases, the
838 safe and secure operation of the correctional institution. In
839 addition, self-injurious behaviors, coupled with repeated
840 refusals to provide express and informed consent for medical
841 treatment and care, are a significant challenge for correctional
842 medical and mental health professionals, resulting in higher
843 costs for medical services, and may result in inadvertent
844 mortality in the incarcerated population.

845 (2) In accordance with s. 945.6042, the Legislature finds
846 that an inmate retains the fundamental right of self-
847 determination regarding decisions pertaining to his or her own
848 health, including the right to choose or refuse medical
849 treatment or life-saving medical procedures. However, the
850 inmate's right to privacy and decisionmaking regarding medical

851 treatment may be outweighed by compelling state interests.

852 (3) When an inmate is engaging in active or ongoing self-
853 injurious behavior and has refused to provide express and
854 informed consent for treatment related to the self-injurious
855 behavior, the warden of the facility where the inmate is housed
856 shall consult with the inmate's treating physician regarding the
857 inmate's medical and mental health status, current medical and
858 mental health treatment needs, and competency to provide express
859 and informed consent for treatment. The warden shall also
860 determine whether the inmate's self-injurious behavior presents
861 a danger to the safety of department staff or other inmates or
862 the security, internal order, or discipline of the institution.

863 (a) If the inmate's treating physician determines that the
864 inmate has a mental illness and is incompetent to consent to
865 treatment, the physician shall proceed in accordance with s.
866 945.6042 for any necessary surgical or medical services. If the
867 inmate is in need of care and treatment as defined in s. 945.42,
868 the inmate shall be referred to a mental health treatment
869 facility for an involuntary examination in accordance with s.
870 945.44.

871 (b) If the inmate is competent, refusing necessary
872 surgical or medical treatment, and engaging in active or ongoing
873 self-injurious behavior that presents a threat to the safety of
874 department staff or other inmates or the security, internal
875 order, or discipline of the institution, the warden shall follow

876 the procedure set forth in subsection (4).

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

888 (b) The inmate shall be provided with a copy of the
889 petition along with the proposed intervention, the basis for the
890 proposed intervention, the names of the testifying experts and
891 witnesses, and the date, time, and location of the hearing.
892 After considering the medical status of the inmate, public
893 safety, and security concerns presented by transporting the
894 inmate, the court may order that the hearing be conducted by
895 electronic means or in person at the institution or at another
896 location designated by the court. If the hearing is ordered by
897 the court to be conducted at a location other than the
898 institution, the department is authorized to transport the
899 inmate to the location of the hearing.

900 (c) The inmate may have an attorney represent him or her

901 at the hearing, and, if the inmate is indigent, the court shall
902 appoint the office of the public defender or private counsel
903 pursuant to s. 27.40(1) to represent the inmate at the hearing.
904 An attorney representing the inmate shall have access to the
905 inmate and any records, including medical or mental health
906 records, which are relevant to the representation of the inmate.

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

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

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

- 921 1. Preservation of the life of the inmate.
- 922 2. Prevention of suicide.
- 923 3. Protection of innocent third parties.
- 924 4. Maintenance of the ethical integrity of the medical
925 profession.

926 5. Preservation of the security, internal order, or
 927 discipline of the institution.

928 6. Rehabilitation of the inmate.

929 7. Any other compelling state interest.

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

940 (5) This section does not repeal by implication any
 941 provision of s. 766.103, the Florida Medical Consent Law, or s.
 942 768.13, the Good Samaritan Act. For all purposes, the Florida
 943 Medical Consent Law and the Good Samaritan Act shall be
 944 considered alternatives to this section.

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

947 945.49 Operation and administration.—

948 (2) RULES.—~~The department, in cooperation with the Mental~~
 949 ~~Health Program Office of the Department of Children and~~
 950 ~~Families,~~ shall adopt rules necessary for administration of ss.

951 945.40-945.49 in accordance with chapter 120.

952 **Section 18. Section 945.6402, Florida Statutes, is created**
953 **to read:**

954 945.6402 Inmate health care advance directives.—

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

958 (a) "Health care facility" has the same meaning as in s.
959 765.101 and includes any correctional institution or facility
960 where health care is provided.

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

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

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

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

976 that may pose a threat to the rights, health, safety, and
977 welfare of inmates in a health care facility and who may be
978 appointed to serve as a proxy for an inmate who is physically or
979 mentally unable to communicate a willful and knowing health care
980 decision.

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

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

992 (2) LEGISLATIVE FINDINGS AND INTENT.-

993 (a) In accordance with chapter 765, the Legislature finds
994 that an inmate retains the fundamental right of self-
995 determination regarding decisions pertaining to his or her own
996 health, including the right to choose or refuse medical
997 treatment. In accordance with chapter 765, this right is subject
998 to certain institutional interests including the protection of
999 human life, the preservation of ethical standards in the medical
1000 profession, and, for inmates committed to the custody of the

1001 department, the security and good order of the institutional
 1002 setting.

1003 (b) To ensure that such right is not lost or diminished by
 1004 virtue of later physical or mental incapacity, the Legislature
 1005 intends that the procedures specified in chapter 765, and as
 1006 modified in this section for the institutional health care
 1007 setting, apply to incarcerated inmates. These procedures should
 1008 be less expensive and less restrictive than guardianship and
 1009 allow an inmate to plan for incapacity by executing a document
 1010 or orally designating another person to direct the course of his
 1011 or her health care or receive his or her health information, or
 1012 both, upon his or her incapacity. These procedures permit a
 1013 previously incapacitated inmate to exercise his or her full
 1014 right to make health care decisions as soon as the capacity to
 1015 make such decisions has been regained.

1016 (c) In order to ensure that the rights and intentions of
 1017 an inmate are respected when the inmate is not able to
 1018 participate actively in decisions concerning himself or herself,
 1019 and to encourage communication among such inmate, his or her
 1020 family, and his or her treating physicians, the Legislature
 1021 declares that the laws of this state recognize the right of a
 1022 competent incarcerated adult to make an advance directive
 1023 instructing his or her physicians to provide, withhold, or
 1024 withdraw life-prolonging procedures or to designate another
 1025 person to make the health care decision for him or her in the

1026 event that such incarcerated person should become incapacitated
1027 and unable to personally direct his or her health care. It is
1028 further the intent of the Legislature that the department
1029 provide the opportunity for inmates to make advance directives
1030 as specified in this section.

1031 (d) The Legislature further recognizes that incarcerated
1032 inmates may not avail themselves of the opportunity to make an
1033 advance directive or, because of incarceration, may not have a
1034 surrogate, as defined in s. 765.101, willing, able, or
1035 reasonably available to make health care decisions on his or her
1036 behalf. Additionally, because of incarceration, the individuals
1037 designated in s. 765.401 who are eligible to serve as an
1038 appointed proxy may not be reasonably available, willing, or
1039 competent to make health care decisions for the inmate in the
1040 event of incapacity. Thus, it is the intent of the Legislature
1041 that the department have an efficient process that is less
1042 expensive and less restrictive than guardianship for the
1043 appointment of a proxy to allow for the expedient delivery of
1044 necessary health care to an incarcerated inmate.

1045 (e) This section does not supersede the process for inmate
1046 involuntary mental health treatment in ss. 945.40-945.49.

1047 (3) CAPACITY OF INMATE; PROCEDURE.—

1048 (a) An inmate is presumed to be capable of making health
1049 care decisions for himself or herself unless he or she is
1050 determined to be incapacitated. When an inmate has

1051 decisionmaking capacity, the inmate's wishes are controlling.
1052 Each physician or health care provider must clearly communicate
1053 the treatment plan and any change to the treatment plan before
1054 implementation of the plan or any change to the plan. Incapacity
1055 may not be inferred from an inmate's involuntary hospitalization
1056 for mental illness or from his or her intellectual disability.

1057 (b) If an inmate's capacity to make health care decisions
1058 for himself or herself or provide informed consent is in
1059 question, the inmate's treating physician at the health care
1060 facility where the inmate is located shall evaluate the inmate's
1061 capacity and, if the evaluating physician concludes that the
1062 inmate lacks capacity, enter that evaluation in the inmate's
1063 medical record. If the evaluating physician has a question as to
1064 whether the inmate lacks capacity, another physician shall also
1065 evaluate the inmate's capacity, and if the second physician
1066 finds that the inmate lacks the capacity to make health care
1067 decisions for himself or herself or provide informed consent,
1068 both physicians' evaluations shall be entered in the inmate's
1069 medical record.

1070 (c) If the inmate is found to be incapacitated and has
1071 designated a health care surrogate in accordance with chapter
1072 765, the institution's or facility's health care staff shall
1073 notify the surrogate and proceed as specified in chapter 765. If
1074 the incapacitated inmate has not designated a health care
1075 surrogate, the health care facility shall appoint a proxy to

1076 make health care decisions for the inmate as specified in this
1077 section.

1078 (d) A determination made pursuant to this section that an
1079 inmate lacks the capacity to make health care decisions for
1080 himself or herself may not be construed as a finding that an
1081 inmate lacks capacity for any other purpose.

1082 (4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.—

1083 (a) In accordance with chapter 765, the department shall
1084 offer inmates the opportunity to execute an advance directive as
1085 defined in s. 765.101.

1086 (b) The department shall provide to each inmate written
1087 information concerning advance directives and necessary forms to
1088 allow inmates to execute an advance directive. The department
1089 and its health care providers shall document in the inmate's
1090 medical records whether the inmate has executed an advance
1091 directive. Neither the department nor its health care providers
1092 may require an inmate to execute an advance directive using the
1093 department's forms. The inmate's advance directive shall travel
1094 with the inmate within the department as part of the inmate's
1095 medical record.

1096 (c) An advance directive may be amended or revoked at any
1097 time by a competent inmate by means of:

- 1098 1. A signed, dated writing of intent to amend or revoke;
1099 2. The physical cancellation or destruction of the advance
1100 directive by the inmate or by another person in the inmate's

1101 presence and at the inmate's direction;
1102 3. An oral expression of intent to amend or revoke; or
1103 4. A subsequently executed advance directive that is
1104 materially different from a previously executed advance
1105 directive.
1106 (5) PROXY.—
1107 (a) If an incapacitated inmate has not executed an advance
1108 directive, or designated a health care surrogate in accordance
1109 with the procedures specified in chapter 765 or the designated
1110 health care surrogate is no longer available to make health care
1111 decisions, health care decisions may be made for the inmate by
1112 any of the individuals specified in the priority order provided
1113 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts
1114 to locate a proxy from the classes specified in s.
1115 765.401(1)(a)-(g) shall be recorded in the inmate's medical
1116 file.
1117 (b) If there are no individuals as specified in s.
1118 765.401(1)(a)-(g) available, willing, or competent to act on
1119 behalf of the inmate, and the inmate is housed in a correctional
1120 institution or facility where health care is provided in a
1121 nonhospital setting, the warden of the institution where the
1122 inmate is housed, or the warden's designee, shall consult with
1123 the Assistant Secretary for Health Services or his or her
1124 designee who shall appoint a department ombudsman to serve as
1125 the proxy. This appointment terminates when the inmate regains

1126 capacity or is no longer incarcerated in the custody of the
1127 department. In accordance with chapter 765 and as provided in
1128 this section, decisions to withhold or withdraw life-prolonging
1129 procedures will be reviewed by the department's proxy review
1130 team for compliance with chapter 765 and the requirements of
1131 this section.

1132 (c) The ombudsman appointed to serve as the proxy is
1133 authorized to request the assistance of the treating physician
1134 and, upon request, a second physician not involved in the
1135 inmate's care to assist the proxy in evaluating the inmate's
1136 treatment.

1137 (d) In accordance with chapter 765, any health care
1138 decision made by any appointed proxy under this section must be
1139 based on the proxy's informed consent and on the decision that
1140 the proxy reasonably believes the inmate would have made under
1141 the circumstances. If there is no indication of what decision
1142 the inmate would have made, the proxy may consider the inmate's
1143 best interest in deciding that proposed treatments are to be
1144 withheld or that treatments currently in effect are to be
1145 withdrawn.

1146 (e) Before exercising the incapacitated inmate's rights to
1147 select or decline health care, the proxy must comply with ss.
1148 765.205 and 765.305, except that any proxy's decision to
1149 withhold or withdraw life-prolonging procedures must be
1150 supported by clear and convincing evidence that the decision

HB 903

2025

1151 would have been the one the inmate would have made had he or she
1152 been competent or, if there is no indication of what decision
1153 the inmate would have made, that the decision is in the inmate's
1154 best interest.

1155 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10
1156 and 45 C.F.R. part 164, subpart E, relevant protected health
1157 information and mental health and medical records of an
1158 incapacitated inmate may be disclosed to a proxy appointed to
1159 make health care decisions for an inmate.

1160 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee
1161 of the department may apply reasonable physical force upon an
1162 incapacitated inmate to administer medical treatment only by or
1163 under the clinical supervision of a physician or his or her
1164 designee and only to carry out a health care decision made in
1165 accordance with this section and chapter 765.

1166 (7) IMMUNITY FROM LIABILITY.—A department health care
1167 provider, ombudsman, or other employee who acts under the
1168 direction of a health care provider as authorized in this
1169 section or chapter 765 is not subject to criminal prosecution or
1170 civil liability and may not be deemed to have engaged in
1171 unprofessional conduct as a result of carrying out a health care
1172 decision made in accordance with this section or chapter 765 on
1173 an inmate's behalf.

1174 **Section 19. Section 947.02, Florida Statutes, is amended**
1175 **to read:**

1176 947.02 Florida Commission on Offender Review; members,
1177 appointment.—

1178 ~~(1) Except as provided in s. 947.021, the members of the~~
1179 Florida Commission on Offender Review shall be directly
1180 appointed by the Governor and Cabinet ~~from a list of eligible~~
1181 ~~applicants submitted by a parole qualifications committee.~~ The
1182 appointments of members of the commission shall be certified to
1183 the Senate by the Governor and Cabinet for confirmation, ~~and the~~
1184 ~~membership of the commission shall include representation from~~
1185 ~~minority persons as defined in s. 288.703.~~

1186 ~~(2) A parole qualifications committee shall consist of~~
1187 ~~five persons who are appointed by the Governor and Cabinet. One~~
1188 ~~member shall be designated as chair by the Governor and Cabinet.~~
1189 ~~The committee shall provide for statewide advertisement and the~~
1190 ~~receiving of applications for any position or positions on the~~
1191 ~~commission and shall devise a plan for the determination of the~~
1192 ~~qualifications of the applicants by investigations and~~
1193 ~~comprehensive evaluations, including, but not limited to,~~
1194 ~~investigation and evaluation of the character, habits, and~~
1195 ~~philosophy of each applicant. Each parole qualifications~~
1196 ~~committee shall exist for 2 years. If additional vacancies on~~
1197 ~~the commission occur during this 2-year period, the committee~~
1198 ~~may advertise and accept additional applications; however, all~~
1199 ~~previously submitted applications shall be considered along with~~
1200 ~~the new applications according to the previously established~~

1201 ~~plan for the evaluation of the qualifications of applicants.~~
1202 ~~(3) Within 90 days before an anticipated vacancy by~~
1203 ~~expiration of term pursuant to s. 947.03 or upon any other~~
1204 ~~vacancy, the Governor and Cabinet shall appoint a parole~~
1205 ~~qualifications committee if one has not been appointed during~~
1206 ~~the previous 2 years. The committee shall consider applications~~
1207 ~~for the commission seat, including the application of an~~
1208 ~~incumbent commissioner if he or she applies, according to~~
1209 ~~subsection (2). The committee shall submit a list of three~~
1210 ~~eligible applicants, which may include the incumbent if the~~
1211 ~~committee so decides, without recommendation, to the Governor~~
1212 ~~and Cabinet for appointment to the commission. In the case of an~~
1213 ~~unexpired term, the appointment must be for the remainder of the~~
1214 ~~unexpired term and until a successor is appointed and qualified.~~
1215 ~~If more than one seat is vacant, the committee shall submit a~~
1216 ~~list of eligible applicants, without recommendation, containing~~
1217 ~~a number of names equal to three times the number of vacant~~
1218 ~~seats; however, the names submitted may not be distinguished by~~
1219 ~~seat, and each submitted applicant shall be considered eligible~~
1220 ~~for each vacancy.~~
1221 ~~(4) Upon receiving a list of eligible persons from the~~
1222 ~~parole qualifications committee, the Governor and Cabinet may~~
1223 ~~reject the list. If the list is rejected, the committee shall~~
1224 ~~reinitiate the application and examination procedure according~~
1225 ~~to subsection (2).~~

1226 ~~(5) Section 120.525 and chapters 119 and 286 apply to all~~
1227 ~~activities and proceedings of a parole qualifications committee.~~

1228 **Section 20. Section 947.021, Florida Statutes, is amended**
1229 **to read:**

1230 947.021 Florida Commission on Offender Review; expedited
1231 appointments.—Whenever the Legislature decreases the membership
1232 of the commission, all terms of office shall expire,
1233 notwithstanding any law to the contrary. Under such
1234 circumstances, the Governor and Cabinet shall expedite the
1235 appointment of commissioners. Pursuant to ~~Notwithstanding the~~
1236 ~~parole qualifications committee procedure in s. 947.02, members~~
1237 shall be directly appointed by the Governor and Cabinet. Members
1238 appointed to the commission may be selected from incumbents.
1239 Members shall be certified to the Senate by the Governor and
1240 Cabinet for confirmation, ~~and the membership of the commission~~
1241 ~~shall include representation from minority persons as defined in~~
1242 ~~s. 288.703.~~

1243 **Section 21. Subsection (2) of section 947.12, Florida**
1244 **Statutes, is amended to read:**

1245 947.12 Members, employees, expenses.—

1246 ~~(2) The members of the examining board created in s.~~
1247 ~~947.02 shall each be paid per diem and travel expenses pursuant~~
1248 ~~to s. 112.061 when traveling in the performance of their duties.~~

1249 **Section 22. Paragraph (g) of subsection (1) and subsection**
1250 **(5) of section 957.04, Florida Statutes, are amended to read:**

1251 957.04 Contract requirements.—

1252 (1) A contract entered into under this chapter for the
 1253 operation of contractor-operated correctional facilities shall
 1254 maximize the cost savings of such facilities and:

1255 (g) Require the contractor to be responsible for a range
 1256 of dental, medical, and psychological services; diet; education;
 1257 and work programs at least equal to those provided by the
 1258 department in comparable facilities. The work and education
 1259 programs must be designed to reduce recidivism, and include
 1260 opportunities to participate in such work programs as authorized
 1261 pursuant to s. 946.523. However, with respect to the dental,
 1262 medical, psychological, and dietary services, the department is
 1263 authorized to exclude any or all of these services from a
 1264 contract for private correctional services entered into under
 1265 this chapter and retain responsibility for the delivery of those
 1266 services, whenever the department finds it to be in the best
 1267 interests of the state.

1268 ~~(5) Each contract entered into by the department must~~
 1269 ~~include substantial minority participation unless demonstrated~~
 1270 ~~by evidence, after a good faith effort, as impractical and must~~
 1271 ~~also include any other requirements the department considers~~
 1272 ~~necessary and appropriate for carrying out the purposes of this~~
 1273 ~~chapter.~~

1274 **Section 23. Subsection (3) of section 957.09, Florida**
 1275 **Statutes, is amended to read:**

1276 | 957.09 Applicability of chapter to other provisions of
 1277 | law.—

1278 | ~~(3) The provisions of law governing the participation of~~
 1279 | ~~minority business enterprises are applicable to this chapter.~~

1280 | **Section 24.** This act shall take effect July 1, 2025.