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

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26 amending s. 934.425, F.S.; exempting persons working
27 for the Department of Corrections or the Department of
28 Juvenile Justice, or persons authorized pursuant to a
29 court order, from provisions regulating the use of
30 tracking devices or tracking applications; amending s.
31 945.41, F.S.; revising legislative intent; revising
32 provisions relating to mental health treatment for
33 inmates; providing that an inmate must give his or her
34 express and informed consent to such treatment;
35 specifying information an inmate must receive
36 regarding treatment; authorizing the warden to
37 authorize certain emergency medical treatment under
38 the direction of the inmate's attending physician
39 under certain circumstances; amending s. 945.42, F.S.;
40 revising and providing definitions; amending s.
41 945.43, F.S.; revising provisions concerning
42 involuntary examinations; amending s. 945.44, F.S.;
43 revising provisions concerning involuntary placement
44 and treatment of an inmate in a mental health
45 treatment facility; repealing s. 945.45 F.S., relating
46 to continued placement of inmates in mental health
47 treatment facilities; amending s. 945.46, F.S.;
48 providing requirements for filing petitions for
49 involuntary inpatient placement for certain inmates;
50 authorizing the court to order alternative means and

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51 venues for certain hearings; requiring, rather than
52 authorizing, inmates to be transported to the nearest
53 receiving facility in certain circumstances; amending
54 s. 945.47, F.S.; specifying purposes for which an
55 inmate's mental health treatment records may be
56 provided to the Florida Commission on Offender Review
57 and the Department of Children and Families;
58 authorizing such records to be provided to certain
59 facilities upon request; amending s. 945.48, F.S.;
60 substantially rewording provisions relating to
61 emergency treatment orders and use of force and
62 providing requirements therefore; providing
63 requirements for emergency and psychotropic
64 medications and use of force; creating s. 945.485,
65 F.S.; providing legislative findings; providing
66 requirements for management and treatment for an
67 inmate's self-injurious behaviors; requiring facility
68 wardens to consult with an inmate's treating physician
69 in certain circumstances and make certain
70 determinations; providing for petitions to compel an
71 inmate to submit to medical treatment in certain
72 circumstances; providing construction; amending s.
73 945.49, F.S.; removing a requirement that the
74 Department of Corrections adopt certain rules in
75 cooperation with the Mental Health Program Office of

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76 the Department of Children and Families; creating s.
77 945.6402, F.S.; providing definitions; providing
78 legislative findings and intent; providing
79 requirements for inmate capacity, health care advance
80 directives, and proxies; authorizing the use of force
81 on incapacitated inmates in certain circumstances;
82 providing immunity from liability for certain persons
83 in certain circumstances; amending s. 947.02, F.S.;
84 revising the manner in which the membership of the
85 Florida Commission on Offender Review is appointed;
86 repealing s. 947.021, F.S., relating to expedited
87 appointments of the Florida Commission on Offender
88 Review; amending s. 947.12, F.S.; conforming
89 provisions to changes made by the act; amending s.
90 957.04, F.S.; revising requirements for contracting
91 for certain services; amending s. 957.09, F.S.;
92 removing a provision relating to minority business
93 enterprises; amending s. 20.32, F.S.; conforming
94 provisions to changes made by the act; providing an
95 effective date.

96
97 Be It Enacted by the Legislature of the State of Florida:

98
99 Section 1. Subsection (10) of section 57.085, Florida
100 Statutes, is amended to read:

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

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

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

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

112 (2) WITHIN FIVE YEARS.—

113 (b) A legal or equitable action on a contract, obligation,
114 or liability founded on a written instrument, except for an
115 action to enforce a claim against a payment bond, which shall be
116 governed by the applicable provisions of paragraph (6) (e), s.
117 255.05(10), s. 337.18(1), or s. 713.23(1) (e), and except for an
118 action for a deficiency judgment governed by paragraph (6) (g)
119 ~~(6) (h)~~.

120 (6) WITHIN ONE YEAR.—

121 (f) Except for actions described in subsection (9), or a
122 petition challenging a criminal conviction, all petitions;
123 extraordinary writs; tort actions, including those under s.
124 768.28(14); or other actions which concern any condition of
125 confinement of a prisoner ~~a petition for extraordinary writ,~~

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~~other than a petition challenging a criminal conviction,~~ filed
by or on behalf of a prisoner as defined in s. 57.085. Any
petition, writ, or action brought under this paragraph must be
commenced within 1 year after the time the incident, conduct, or
conditions occurred or within 1 year after the time the
incident, conduct, or conditions were discovered, or should have
been discovered.

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

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

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

760.701 Lawsuits by prisoners.—

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

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151 pretrial release, or diversionary program.

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

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

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

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

174 Section 4. Paragraph (d) of subsection (2) of section
175 775.087, Florida Statutes, is amended, paragraph (e) is added to

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that subsection, paragraph (e) of subsection (3) is redesignated as paragraph (f), paragraph (d) of that subsection is amended, a new paragraph (e) is added to that subsection, and paragraph (a) of subsection (2) and paragraph (a) of subsection (3) are republished, to read:

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

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

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated battery;
- g. Kidnapping;
- h. Escape;
- i. Aircraft piracy;
- j. Aggravated child abuse;
- k. Aggravated abuse of an elderly person or disabled adult;
- l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- m. Carjacking;

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201 n. Home-invasion robbery;
202 o. Aggravated stalking;
203 p. Trafficking in cannabis, trafficking in cocaine,
204 capital importation of cocaine, trafficking in illegal drugs,
205 capital importation of illegal drugs, trafficking in
206 phencyclidine, capital importation of phencyclidine, trafficking
207 in methaqualone, capital importation of methaqualone,
208 trafficking in amphetamine, capital importation of amphetamine,
209 trafficking in flunitrazepam, trafficking in gamma-
210 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
211 trafficking in Phenethylamines, or other violation of s.
212 893.135(1);
213 q. Possession of a firearm by a felon; or
214 r. Human trafficking
215
216 and during the commission of the offense, such person actually
217 possessed a "firearm" or "destructive device" as those terms are
218 defined in s. 790.001, shall be sentenced to a minimum term of
219 imprisonment of 10 years, except that a person who is convicted
220 for possession of a firearm by a felon or burglary of a
221 conveyance shall be sentenced to a minimum term of imprisonment
222 of 3 years if such person possessed a "firearm" or "destructive
223 device" during the commission of the offense. However, if an
224 offender who is convicted of the offense of possession of a
225 firearm by a felon has a previous conviction of committing or

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attempting to commit a felony listed in s. 775.084(1)(b)1. and actually possessed a firearm or destructive device during the commission of the prior felony, the offender shall be sentenced to a minimum term of imprisonment of 10 years.

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

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

(d) It is the intent of the Legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms or destructive devices be punished to the fullest extent of the law. The court shall impose, ~~and the~~

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251 minimum term ~~terms~~ of imprisonment required under paragraph (a)
252 ~~imposed pursuant to this subsection shall be imposed~~ for each
253 qualifying felony offense ~~count~~ for which the person is
254 convicted. If the offender is convicted of multiple felony
255 offenses for which paragraph (a) requires the imposition of a
256 minimum term of imprisonment, the court shall impose any such
257 terms ~~term~~ of imprisonment ~~provided for in this subsection~~
258 ~~consecutively to any other term of imprisonment imposed for any~~
259 ~~other felony offense.~~

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

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

- 269 a. Murder;
- 270 b. Sexual battery;
- 271 c. Robbery;
- 272 d. Burglary;
- 273 e. Arson;
- 274 f. Aggravated battery;
- 275 g. Kidnapping;

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h. Escape;
 i. Sale, manufacture, delivery, or intent to sell,
 manufacture, or deliver any controlled substance;
 j. Aircraft piracy;
 k. Aggravated child abuse;
 l. Aggravated abuse of an elderly person or disabled
 adult;
 m. Unlawful throwing, placing, or discharging of a
 destructive device or bomb;
 n. Carjacking;
 o. Home-invasion robbery;
 p. Aggravated stalking;
 q. Trafficking in cannabis, trafficking in cocaine,
 capital importation of cocaine, trafficking in illegal drugs,
 capital importation of illegal drugs, trafficking in
 phencyclidine, capital importation of phencyclidine, trafficking
 in methaqualone, capital importation of methaqualone,
 trafficking in amphetamine, capital importation of amphetamine,
 trafficking in flunitrazepam, trafficking in gamma-
 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 trafficking in Phenethylamines, or other violation of s.
 893.135(1); or
 r. Human trafficking
 and during the commission of the offense, such person possessed

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301 a semiautomatic firearm and its high-capacity detachable box
302 magazine or a machine gun as defined in s. 790.001, shall be
303 sentenced to a minimum term of imprisonment of 15 years.

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

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

322 (d) It is the intent of the Legislature that offenders who
323 possess, carry, display, use, threaten to use, or attempt to use
324 a semiautomatic firearm and its high-capacity detachable box
325 magazine or a machine gun as defined in s. 790.001 be punished

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326 to the fullest extent of the law. The court shall impose, and
327 the minimum term ~~terms~~ of imprisonment required under paragraph
328 (a) imposed pursuant to this subsection shall be imposed for
329 each qualifying felony offense ~~count~~ for which the person is
330 convicted. If the offender is convicted of multiple felony
331 offenses for which paragraph (a) requires the imposition of a
332 minimum term of imprisonment, the court shall impose any such
333 terms ~~term~~ of imprisonment ~~provided for in this subsection~~
334 ~~consecutively to any other term of imprisonment imposed for any~~
335 ~~other felony offense.~~

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

342 (f) ~~(e)~~ As used in this subsection, the term:

343 1. "High-capacity detachable box magazine" means any
344 detachable box magazine, for use in a semiautomatic firearm,
345 which is capable of being loaded with more than 20 centerfire
346 cartridges.

347 2. "Semiautomatic firearm" means a firearm which is
348 capable of firing a series of rounds by separate successive
349 depressions of the trigger and which uses the energy of
350 discharge to perform a portion of the operating cycle.

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

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

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

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

(3) If electrocution or lethal injection is held to be unconstitutional by the Florida Supreme Court under the State Constitution, or held to be unconstitutional by the United States Supreme Court under the United States Constitution, or if the United States Supreme Court declines to review any judgment holding a method of execution to be unconstitutional under the United States Constitution made by the Florida Supreme Court or the United States Court of Appeals that has jurisdiction over Florida, or if the acquisition of chemicals necessary for lethal injection by the department becomes impossible or impractical, all persons sentenced to death for a capital crime shall be executed by a method not deemed unconstitutional ~~any~~

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376 ~~constitutional method of execution.~~

377 Section 7. Paragraphs (b) through (e) of subsection (4) of
378 section 934.425, Florida Statutes, are redesignated as
379 paragraphs (e) through (h), respectively, and new paragraphs
380 (b), (c), and (d) are added to that subsection, to read:

381 934.425 Installation or use of tracking devices or
382 tracking applications; exceptions; penalties.—

383 (4) This section does not apply to:

384 (b) A correctional officer, correctional probation
385 officer, or any other officer or support personnel, as those
386 terms are defined in s. 943.10, of the Department of Corrections
387 who lawfully installs, places, or uses a tracking device or
388 tracking application on a person in his or her care, custody, or
389 control and in the course and scope of his or her employment.

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

396 (d) A person authorized to install, place, or use a
397 tracking device or tracking application pursuant to a court
398 order.

399 Section 8. Section 945.41, Florida Statutes, is amended to
400 read:

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

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

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

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

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

(2) INDIVIDUAL DIGNITY AND TREATMENT.—

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

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426 dignity and personal integrity.

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

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

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

449 (e)-(2) Mental health treatment facilities shall be secure
450 and adequately equipped and staffed for the provision of mental

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451 health treatment and services. Inmates shall be offered the
452 least restrictive appropriate available treatment and services
453 based on their assessed needs and best interests and consistent
454 with improvement of their condition for facilitation of
455 appropriate adjustment within the correctional environment
456 ~~services and that, to the extent possible, such services be~~
457 ~~provided in the least restrictive manner consistent with optimum~~
458 ~~improvement of the inmate's condition.~~

459 (3) EXPRESS AND INFORMED CONSENT.—

460 (a) A mentally competent inmate offered mental health
461 treatment within the department shall give his or her express
462 and informed consent for such treatment. Before giving such
463 consent, the following information shall be provided and
464 explained in plain language to the inmate:

- 465 1. The proposed treatment.
- 466 2. The purpose of the treatment.
- 467 3. The common risks, benefits, and side effects of the
468 treatment and the specific dosage range for a medication, if
469 applicable.
- 470 4. Alternative treatment modalities.
- 471 5. The approximate length of treatment.
- 472 6. The potential effects of stopping treatment.
- 473 7. How treatment will be monitored.
- 474 8. That any consent given for treatment may be revoked
475 orally or in writing before or during the treatment period by

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476 the inmate or by a person legally authorized to make health care
477 decisions on behalf of the inmate.

478 (b) Inmates who are determined to be incompetent to
479 consent to treatment shall receive treatment deemed to be
480 necessary for their appropriate care and for the safety of the
481 inmate or others in accordance with the procedures established
482 in ss. 945.40-945.49.

483 (4)-(3) PAROLE.—Inmates who are transferred to any facility
484 for the purpose of mental health treatment and services shall be
485 given consideration for parole and be eligible for release by
486 reason of gain-time allowances as provided in s. 944.291 and
487 release by expiration of sentence, consistent with guidelines
488 established for that purpose by the department.

489 (5)-(4) YOUTHFUL OFFENDERS.—Any inmate sentenced as a
490 youthful offender, or designated as a youthful offender by the
491 department under chapter 958, who is transferred pursuant to
492 this act to a mental health treatment facility shall be
493 separated from other inmates, if necessary, as determined by the
494 warden of the mental health treatment facility.

495 (6)-(5) TREATMENT FACILITIES.—The department may designate
496 mental health treatment facilities for adult, youthful, and
497 female offenders or may contract with other appropriate
498 entities, persons, or agencies for such services.

499 (7) EMERGENCY MEDICAL TREATMENT.—Notwithstanding any other
500 provision of this section, when the express and informed consent

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of an inmate placed in a mental health treatment facility in accordance with s. 945.44 cannot be obtained or the inmate is incompetent to consent to treatment, the warden of a mental health treatment facility, or his or her designated representative, under the direction of the inmate's attending physician, may authorize nonpsychiatric, emergency surgical treatment or other routine medical treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.

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

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

(1) "Court" means the circuit court.

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

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526 and services are ~~is also~~ more intense than treatment and
527 services provided in a transitional care unit and are ~~is~~ devoted
528 principally toward rapid stabilization of acute symptoms and
529 conditions.

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

531 (4) "Express and informed consent" means consent
532 voluntarily given in writing, by a competent inmate, after
533 sufficient explanation and disclosure of the subject matter
534 involved, to enable the inmate to make a knowing and willful
535 decision without any element of force, fraud, deceit, duress, or
536 other form of constraint or coercion.

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

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

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

546 (6) "Incompetent to consent to treatment" means a state in
547 which an inmate's judgment is so affected by mental illness that
548 he or she lacks the capacity to make a well-reasoned, willful,
549 and knowing decision concerning his or her medical or mental
550 health treatment and services. The term is distinguished from

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551 the term "incompetent to proceed," as defined in s. 916.106, and
552 only refers to an inmate's inability to provide express and
553 informed consent for medical or mental health treatment and
554 services.

555 ~~(4) "Director" means the Director for Mental Health~~
556 ~~Services of the Department of Corrections or his or her~~
557 ~~designee.~~

558 ~~(5) "In immediate need of care and treatment" means that~~
559 ~~an inmate is apparently mentally ill and is not able to be~~
560 ~~appropriately cared for in the institution where he or she is~~
561 ~~confined and that, but for being isolated in a more restrictive~~
562 ~~and secure housing environment, because of the apparent mental~~
563 ~~illness.~~

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

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

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

575 ~~(c) All available less restrictive treatment alternatives~~

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576 ~~that would offer an opportunity for improvement of the inmate's~~
577 ~~condition have been clinically determined to be inappropriate.~~

578 (7)-(6) "In need of care and treatment" means that an
579 inmate has a mental illness for which inpatient services in a
580 mental health treatment facility are necessary and ~~that, but for~~
581 ~~being isolated in a more restrictive and secure housing~~
582 ~~environment,~~ because of the mental illness:

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

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

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

594 (b) The inmate is incompetent to consent to treatment and
595 is unable or is refusing to provide express and informed consent
596 to treatment.

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

599 (d)-(e) All available less restrictive treatment
600 alternatives that would offer an opportunity for improvement of

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the inmate's condition have been clinically determined to be inappropriate.

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

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

(10) "Likelihood of serious harm" means:

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

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

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

~~(11)-(8)-~~ "Mental health treatment facility" means any extended treatment or hospitalization-level unit within the corrections system which the Assistant Secretary for Health

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Services of the department specifically designates by rule to provide acute mental health ~~psychiatric~~ care and which may include involuntary treatment and therapeutic intervention in contrast to less intensive levels of care such as outpatient mental health care, transitional mental health care, or crisis stabilization care. The term does not include a forensic facility as defined in s. 916.106.

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

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

~~(14)-(11)~~ "Psychological professional" means a behavioral practitioner who has an approved doctoral degree in psychology

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as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by the department or who is licensed as a psychologist pursuant to chapter 490.

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

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

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

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676 defendants who are incompetent to proceed as defined in s.
677 916.106.

678 (18)-(14) "Warden" means the warden of a state corrections
679 facility or his or her designee.

680 Section 10. Section 945.43, Florida Statutes, is amended
681 to read:

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

684 945.43 Involuntary examination.—

685 (1) If there is reason to believe that an inmate has a
686 mental illness and the inmate is in need of care and treatment,
687 the inmate's treating clinician may refer the inmate to a mental
688 health treatment facility for an involuntary examination. Upon
689 referral, the warden of the facility where the inmate is housed
690 shall transfer the inmate to a mental health treatment facility.

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

695 (3) If, after the examination, the inmate is determined to
696 be in need of care and treatment, the psychiatrist shall propose
697 a recommended course of treatment that is essential to the care
698 of the inmate and the warden shall initiate proceedings for
699 placement of the inmate in the mental health treatment facility
700 and for involuntary treatment of the inmate as specified in s.

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945.44. If the inmate is not in need of care and treatment, he or she shall be transferred out of the mental health treatment facility and provided with appropriate mental health services.

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

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

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

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

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

(1) CRITERIA FOR INVOLUNTARY PLACEMENT OR TREATMENT.—

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

(b) An inmate may receive involuntary treatment for which the inmate is unable or has refused to provide express and

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informed consent, if all of the following apply:

1. The inmate is mentally ill.

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

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

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

5. The inmate is incompetent to consent to treatment.

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

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

(b) The inmate shall be provided with a copy of the petition along with the proposed treatment, the basis for the proposed treatment, the names of the examining experts, and the date, time, and location of the hearing. After considering the public safety and security concerns presented by transporting

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751 the inmate or in conducting onsite hearings, the court may order
752 that the hearing be conducted by electronic means or in person
753 at the facility or at another location designated by the court.
754 If the hearing is ordered by the court to be conducted at a
755 location other than the facility, the department is authorized
756 to transport the inmate to the location of the hearing.

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

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

771 (e) The court may waive the presence of the inmate at the
772 hearing if the waiver is consistent with the best interests of
773 the inmate and the inmate's counsel does not object. One of the
774 inmate's physicians whose opinion supported the petition shall
775 appear as a witness at the hearing.

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

777 (a) If the court finds by clear and convincing evidence
778 that the inmate meets the criteria in paragraph (1)(a), the
779 court must order that the inmate be involuntarily placed in the
780 mental health treatment facility for a period not to exceed 6
781 months.

782 (b) If the court finds by clear and convincing evidence
783 that the inmate meets the criteria in paragraph (1)(b), the
784 court may order that the inmate be involuntarily treated for a
785 period not to exceed 6 months, concurrent with an order for
786 placement in the mental health treatment facility. In
787 determining whether to order involuntary treatment under this
788 section, the court must consider the inmate's expressed
789 preference regarding treatment; whether the inmate is able to
790 express a preference; the probability of adverse side effects;
791 the prognosis for the inmate without treatment; the prognosis
792 for the inmate with treatment; and any other factors the court
793 deems relevant.

794 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order
795 authorizing involuntary placement and treatment shall allow such
796 placement and treatment for a period not to exceed 6 months
797 following the date of the order. Unless the court is notified in
798 writing that the inmate has been discharged from the mental
799 health treatment facility because he or she is no longer in need
800 of care and treatment, has been transferred to another

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

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

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

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

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

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

(3) The warden shall file petitions for involuntary

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

(4) After considering the public safety and security concerns presented by transporting the inmate or in conducting onsite hearings, the court may order that the hearing be conducted by electronic means or in person at the facility or at another location designated by the court. If the hearing is

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

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

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

945.47 Discharge of inmate from mental health treatment.—

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

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

(b) If the inmate's sentence expires during his or her treatment, but he or she is no longer in need of care and treatment as an inpatient, the inmate may be released with a

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876 recommendation for outpatient treatment, pursuant to ~~the~~
877 ~~provisions of~~ ss. 945.40-945.49.

878 (2) At any time that an inmate who has received mental
879 health treatment while in the custody of the department becomes
880 eligible for release under supervision or upon end of sentence,
881 a record of the inmate's mental health treatment may be provided
882 to the Florida Commission on Offender Review and to the
883 Department of Children and Families to arrange postrelease
884 aftercare placement and to prospective recipient inpatient
885 health care or residential facilities upon request. The record
886 shall include, at a minimum, a summary of the inmate's
887 diagnosis, length of stay in treatment, clinical history,
888 prognosis, prescribed medication, treatment plan, and
889 recommendations for aftercare services.

890 Section 15. Section 945.48, Florida Statutes, is amended
891 to read:

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

894 945.48 Emergency treatment orders and use of force.—

895 (1) EMERGENCY MEDICATION.—The department is authorized to
896 involuntarily administer psychotropic medication to an inmate on
897 an emergency basis without following the procedure outlined in
898 s. 945.43 only as specified in this section. An emergency
899 treatment order for psychotropic medication may be provided to
900 the inmate upon the written order of a physician licensed

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901 pursuant to chapter 458 or chapter 459 in an emergency not
902 exceeding 72 hours, excluding weekends and legal holidays. An
903 emergency exists when an inmate with a mental illness presents
904 an immediate threat of:

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

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

908 (2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may
909 be administered only when the medication constitutes an
910 appropriate treatment for a mental illness and its symptoms and
911 alternative treatments are not available or indicated, or would
912 not be effective. If after the 72-hour period the inmate has not
913 given express and informed consent to the medication initially
914 refused, the inmate's treating physician shall refer the inmate
915 to a mental health treatment facility for an involuntary
916 examination in accordance with the procedures described in s.
917 945.43. Upon such referral, the warden shall, within 48 hours,
918 excluding weekends and legal holidays, transfer the inmate to a
919 mental health treatment facility. Upon transfer of the inmate
920 for an involuntary examination, the emergency treatment order
921 may be continued upon the written order of a physician as long
922 as the physician has determined that the emergency continues to
923 present a danger to the safety of the inmate or others and the
924 criteria described in this subsection are satisfied. If
925 psychotropic medication is still recommended after the

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emergency, it may only be administered after following the
procedures outlined in s. 945.44.

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

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

945.485 Management and treatment for self-injurious
behaviors.—

(1) The Legislature finds that nonsuicidal self-injurious
behaviors in correctional institutions, or acts intended to
cause bodily harm but not death, have increased in the
correctional environment. Self-injurious behavior may include
nonsuicidal self-injury or self-mutilation, such as cutting,
reopening wounds, and ingesting or inserting foreign objects or
dangerous instruments into the body. These behaviors pose a
significant threat to inmates, staff, and, in many cases, the
safe and secure operation of the correctional institution. In
addition, self-injurious behaviors, coupled with repeated

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951 refusals to provide express and informed consent for medical
952 treatment and care, are a significant challenge for correctional
953 medical and mental health professionals, resulting in higher
954 costs for medical services, and may result in inadvertent
955 mortality in the incarcerated population.

956 (2) In accordance with s. 945.6042, the Legislature finds
957 that an inmate retains the fundamental right of self-
958 determination regarding decisions pertaining to his or her own
959 health, including the right to choose or refuse medical
960 treatment or life-saving medical procedures. However, the
961 inmate's right to privacy and decisionmaking regarding medical
962 treatment may be outweighed by compelling state interests.

963 (3) When an inmate is engaging in active or ongoing self-
964 injurious behavior and has refused to provide express and
965 informed consent for treatment related to the self-injurious
966 behavior, the warden of the facility where the inmate is housed
967 shall consult with the inmate's treating physician regarding the
968 inmate's medical and mental health status, current medical and
969 mental health treatment needs, and competency to provide express
970 and informed consent for treatment. The warden shall also
971 determine whether the inmate's self-injurious behavior presents
972 a danger to the safety of department staff or other inmates or
973 the security, internal order, or discipline of the institution.

974 (a) If the inmate's treating physician determines that the
975 inmate has a mental illness and is incompetent to consent to

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976 treatment, the physician shall proceed in accordance with s.
977 945.6042 for any necessary surgical or medical services. If the
978 inmate is in need of care and treatment as defined in s. 945.42,
979 the inmate shall be referred to a mental health treatment
980 facility for an involuntary examination in accordance with s.
981 945.44.

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

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

999 (b) The inmate shall be provided with a copy of the
1000 petition along with the proposed intervention, the basis for the

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1001 proposed intervention, the names of the testifying experts and
1002 witnesses, and the date, time, and location of the hearing.
1003 After considering the medical status of the inmate, public
1004 safety, and security concerns presented by transporting the
1005 inmate, the court may order that the hearing be conducted by
1006 electronic means or in person at the institution or at another
1007 location designated by the court. If the hearing is ordered by
1008 the court to be conducted at a location other than the
1009 institution, the department is authorized to transport the
1010 inmate to the location of the hearing.

1011 (c) The inmate may have an attorney represent him or her
1012 at the hearing, and, if the inmate is indigent, the court shall
1013 appoint the office of the public defender or private counsel
1014 pursuant to s. 27.40(1) to represent the inmate at the hearing.
1015 An attorney representing the inmate shall have access to the
1016 inmate and any records, including medical or mental health
1017 records, which are relevant to the representation of the inmate.

1018 (d) The hearing on the petition shall be held as
1019 expeditiously as possible after the petition is filed, but no
1020 later than 5 calendar days after filing. The court may appoint a
1021 general or special magistrate to preside. The inmate may testify
1022 or not, as he or she chooses, may cross-examine witnesses
1023 testifying on behalf of the institution, and may present his or
1024 her own witnesses.

1025 (e) The court may waive the presence of the inmate at the

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1026 hearing if the waiver is consistent with the best interests of
1027 the inmate and the inmate's counsel does not object.

1028 (f) The court shall determine whether the warden has
1029 established, by clear and convincing evidence, a compelling
1030 state interest sufficient to outweigh the inmate's right to
1031 refuse treatment. The court shall consider all of the following:

1032 1. Preservation of the life of the inmate.

1033 2. Prevention of suicide.

1034 3. Protection of innocent third parties.

1035 4. Maintenance of the ethical integrity of the medical
1036 profession.

1037 5. Preservation of the security, internal order, or
1038 discipline of the institution.

1039 6. Rehabilitation of the inmate.

1040 7. Any other compelling state interest.

1041 (g) If the court determines that there are compelling
1042 state interests sufficient to override the inmate's right to
1043 refuse treatment, the court shall enter an order authorizing
1044 emergency surgical intervention or other medical services,
1045 narrowly tailored and in the least intrusive manner possible,
1046 only as necessary to remedy the threat to the safety of third
1047 parties or the security, internal order, or discipline of the
1048 institution. Emergency surgical intervention or other medical
1049 services authorized by the court may be carried out at the
1050 institution or at a licensed hospital, as applicable.

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1051 (5) This section does not repeal by implication any
1052 provision of s. 766.103, the Florida Medical Consent Law, or s.
1053 768.13, the Good Samaritan Act. For all purposes, the Florida
1054 Medical Consent Law and the Good Samaritan Act shall be
1055 considered alternatives to this section.

1056 Section 17. Subsection (2) of section 945.49, Florida
1057 Statutes, is amended to read:

1058 945.49 Operation and administration.—

1059 (2) RULES.—~~The department, in cooperation with the Mental~~
1060 ~~Health Program Office of the Department of Children and~~
1061 ~~Families,~~ shall adopt rules necessary for administration of ss.
1062 945.40–945.49 in accordance with chapter 120.

1063 Section 18. Section 945.6402, Florida Statutes, is created
1064 to read:

1065 945.6402 Inmate health care advance directives.—

1066 (1) DEFINITIONS.—The terms used in this section have the
1067 same meanings as in s. 765.101 unless otherwise specified in
1068 this section. For purposes of this section, the term:

1069 (a) "Health care facility" has the same meaning as in s.
1070 765.101 and includes any correctional institution or facility
1071 where health care is provided.

1072 (b) "Incapacity" or "incompetent" means an inmate is
1073 physically or mentally unable to communicate a willful and
1074 knowing health care decision.

1075 (c) "Informed consent" means consent voluntarily given by

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1076 an inmate after a sufficient explanation and disclosure of the
1077 subject matter involved to enable the inmate to have a general
1078 understanding of the treatment or procedure and the medically
1079 acceptable alternatives, including the substantial risks and
1080 hazards inherent in the proposed treatment or procedures, and to
1081 make a knowing health care decision without coercion or undue
1082 influence.

1083 (d) "Inmate" means any person committed to the custody of
1084 the department.

1085 (e) "Ombudsman" means an individual designated and
1086 specifically trained by the department to identify conditions
1087 that may pose a threat to the rights, health, safety, and
1088 welfare of inmates in a health care facility and who may be
1089 appointed to serve as a proxy for an inmate who is physically or
1090 mentally unable to communicate a willful and knowing health care
1091 decision.

1092 (f) "Proxy" means a competent adult who has not been
1093 expressly designated to make health care decisions for a
1094 particular incapacitated inmate, but who, nevertheless, is
1095 authorized pursuant to s. 765.401 and as specified in this
1096 section to make health care decisions for such inmate.

1097 (g) "Proxy review team" means a team of at least five
1098 members, appointed by the Assistant Secretary for Health
1099 Services. The team shall be composed of, at a minimum, one
1100 physician licensed pursuant to chapter 458 or chapter 459, one

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1101 psychologist licensed pursuant to chapter 490, one nurse
1102 licensed pursuant to chapter 464, and one department chaplain.

1103 (2) LEGISLATIVE FINDINGS AND INTENT.-

1104 (a) In accordance with chapter 765, the Legislature finds
1105 that an inmate retains the fundamental right of self-
1106 determination regarding decisions pertaining to his or her own
1107 health, including the right to choose or refuse medical
1108 treatment. In accordance with chapter 765, this right is subject
1109 to certain institutional interests including the protection of
1110 human life, the preservation of ethical standards in the medical
1111 profession, and, for inmates committed to the custody of the
1112 department, the security and good order of the institutional
1113 setting.

1114 (b) To ensure that such right is not lost or diminished by
1115 virtue of later physical or mental incapacity, the Legislature
1116 intends that the procedures specified in chapter 765, and as
1117 modified in this section for the institutional health care
1118 setting, apply to incarcerated inmates. These procedures should
1119 be less expensive and less restrictive than guardianship and
1120 allow an inmate to plan for incapacity by executing a document
1121 or orally designating another person to direct the course of his
1122 or her health care or receive his or her health information, or
1123 both, upon his or her incapacity. These procedures permit a
1124 previously incapacitated inmate to exercise his or her full
1125 right to make health care decisions as soon as the capacity to

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1126 make such decisions has been regained.

1127 (c) In order to ensure that the rights and intentions of
1128 an inmate are respected when the inmate is not able to
1129 participate actively in decisions concerning himself or herself,
1130 and to encourage communication among such inmate, his or her
1131 family, and his or her treating physicians, the Legislature
1132 declares that the laws of this state recognize the right of a
1133 competent incarcerated adult to make an advance directive
1134 instructing his or her physicians to provide, withhold, or
1135 withdraw life-prolonging procedures or to designate another
1136 person to make the health care decision for him or her in the
1137 event that such incarcerated person should become incapacitated
1138 and unable to personally direct his or her health care. It is
1139 further the intent of the Legislature that the department
1140 provide the opportunity for inmates to make advance directives
1141 as specified in this section.

1142 (d) The Legislature further recognizes that incarcerated
1143 inmates may not avail themselves of the opportunity to make an
1144 advance directive or, because of incarceration, may not have a
1145 surrogate, as defined in s. 765.101, willing, able, or
1146 reasonably available to make health care decisions on his or her
1147 behalf. Additionally, because of incarceration, the individuals
1148 designated in s. 765.401 who are eligible to serve as an
1149 appointed proxy may not be reasonably available, willing, or
1150 competent to make health care decisions for the inmate in the

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1151 event of incapacity. Thus, it is the intent of the Legislature
1152 that the department have an efficient process that is less
1153 expensive and less restrictive than guardianship for the
1154 appointment of a proxy to allow for the expedient delivery of
1155 necessary health care to an incarcerated inmate.

1156 (e) This section does not supersede the process for inmate
1157 involuntary mental health treatment in ss. 945.40-945.49.

1158 (3) CAPACITY OF INMATE; PROCEDURE.—

1159 (a) An inmate is presumed to be capable of making health
1160 care decisions for himself or herself unless he or she is
1161 determined to be incapacitated. When an inmate has
1162 decisionmaking capacity, the inmate's wishes are controlling.
1163 Each physician or health care provider must clearly communicate
1164 the treatment plan and any change to the treatment plan before
1165 implementation of the plan or any change to the plan. Incapacity
1166 may not be inferred from an inmate's involuntary hospitalization
1167 for mental illness or from his or her intellectual disability.

1168 (b) If an inmate's capacity to make health care decisions
1169 for himself or herself or provide informed consent is in
1170 question, the inmate's treating physician at the health care
1171 facility where the inmate is located shall evaluate the inmate's
1172 capacity and, if the evaluating physician concludes that the
1173 inmate lacks capacity, enter that evaluation in the inmate's
1174 medical record. If the evaluating physician has a question as to
1175 whether the inmate lacks capacity, another physician shall also

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1176 evaluate the inmate's capacity, and if the second physician
1177 finds that the inmate lacks the capacity to make health care
1178 decisions for himself or herself or provide informed consent,
1179 both physicians' evaluations shall be entered in the inmate's
1180 medical record.

1181 (c) If the inmate is found to be incapacitated and has
1182 designated a health care surrogate in accordance with chapter
1183 765, the institution's or facility's health care staff shall
1184 notify the surrogate and proceed as specified in chapter 765. If
1185 the incapacitated inmate has not designated a health care
1186 surrogate, the health care facility shall appoint a proxy to
1187 make health care decisions for the inmate as specified in this
1188 section.

1189 (d) A determination made pursuant to this section that an
1190 inmate lacks the capacity to make health care decisions for
1191 himself or herself may not be construed as a finding that an
1192 inmate lacks capacity for any other purpose.

1193 (4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.—

1194 (a) In accordance with chapter 765, the department shall
1195 offer inmates the opportunity to execute an advance directive as
1196 defined in s. 765.101.

1197 (b) The department shall provide to each inmate written
1198 information concerning advance directives and necessary forms to
1199 allow inmates to execute an advance directive. The department
1200 and its health care providers shall document in the inmate's

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1201 medical records whether the inmate has executed an advance
1202 directive. Neither the department nor its health care providers
1203 may require an inmate to execute an advance directive using the
1204 department's forms. The inmate's advance directive shall travel
1205 with the inmate within the department as part of the inmate's
1206 medical record.

1207 (c) An advance directive may be amended or revoked at any
1208 time by a competent inmate by means of:

- 1209 1. A signed, dated writing of intent to amend or revoke;
1210 2. The physical cancellation or destruction of the advance
1211 directive by the inmate or by another person in the inmate's
1212 presence and at the inmate's direction;
1213 3. An oral expression of intent to amend or revoke; or
1214 4. A subsequently executed advance directive that is
1215 materially different from a previously executed advance
1216 directive.

1217 (5) PROXY.—

1218 (a) If an incapacitated inmate has not executed an advance
1219 directive, or designated a health care surrogate in accordance
1220 with the procedures specified in chapter 765 or the designated
1221 health care surrogate is no longer available to make health care
1222 decisions, health care decisions may be made for the inmate by
1223 any of the individuals specified in the priority order provided
1224 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts
1225 to locate a proxy from the classes specified in s.

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1226 765.401(1)(a)-(g) shall be recorded in the inmate's medical
1227 file.

1228 (b) If there are no individuals as specified in s.
1229 765.401(1)(a)-(g) available, willing, or competent to act on
1230 behalf of the inmate, and the inmate is housed in a correctional
1231 institution or facility where health care is provided in a
1232 nonhospital setting, the warden of the institution where the
1233 inmate is housed, or the warden's designee, shall consult with
1234 the Assistant Secretary for Health Services or his or her
1235 designee who shall appoint a department ombudsman to serve as
1236 the proxy. This appointment terminates when the inmate regains
1237 capacity or is no longer incarcerated in the custody of the
1238 department. In accordance with chapter 765 and as provided in
1239 this section, decisions to withhold or withdraw life-prolonging
1240 procedures will be reviewed by the department's proxy review
1241 team for compliance with chapter 765 and the requirements of
1242 this section.

1243 (c) The ombudsman appointed to serve as the proxy is
1244 authorized to request the assistance of the treating physician
1245 and, upon request, a second physician not involved in the
1246 inmate's care to assist the proxy in evaluating the inmate's
1247 treatment.

1248 (d) In accordance with chapter 765, any health care
1249 decision made by any appointed proxy under this section must be
1250 based on the proxy's informed consent and on the decision that

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1251 the proxy reasonably believes the inmate would have made under
1252 the circumstances. If there is no indication of what decision
1253 the inmate would have made, the proxy may consider the inmate's
1254 best interest in deciding that proposed treatments are to be
1255 withheld or that treatments currently in effect are to be
1256 withdrawn.

1257 (e) Before exercising the incapacitated inmate's rights to
1258 select or decline health care, the proxy must comply with ss.
1259 765.205 and 765.305, except that any proxy's decision to
1260 withhold or withdraw life-prolonging procedures must be
1261 supported by clear and convincing evidence that the decision
1262 would have been the one the inmate would have made had he or she
1263 been competent or, if there is no indication of what decision
1264 the inmate would have made, that the decision is in the inmate's
1265 best interest.

1266 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10
1267 and 45 C.F.R. part 164, subpart E, relevant protected health
1268 information and mental health and medical records of an
1269 incapacitated inmate may be disclosed to a proxy appointed to
1270 make health care decisions for an inmate.

1271 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee
1272 of the department may apply reasonable physical force upon an
1273 incapacitated inmate to administer medical treatment only by or
1274 under the clinical supervision of a physician or his or her
1275 designee and only to carry out a health care decision made in

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1276 accordance with this section and chapter 765.

1277 (7) IMMUNITY FROM LIABILITY.—A department health care
1278 provider, ombudsman, or other employee who acts under the
1279 direction of a health care provider as authorized in this
1280 section or chapter 765 is not subject to criminal prosecution or
1281 civil liability and may not be deemed to have engaged in
1282 unprofessional conduct as a result of carrying out a health care
1283 decision made in accordance with this section or chapter 765 on
1284 an inmate's behalf.

1285 Section 19. Section 947.02, Florida Statutes, is amended
1286 to read:

1287 947.02 Florida Commission on Offender Review; members,
1288 appointment.—

1289 (1) ~~Except as provided in s. 947.021,~~ The members of the
1290 Florida Commission on Offender Review shall be directly
1291 appointed by the Governor and Cabinet ~~from a list of eligible~~
1292 ~~applicants submitted by a parole qualifications committee.~~ The
1293 appointments of members of the commission shall be certified to
1294 the Senate by the Governor and Cabinet for confirmation, ~~and the~~
1295 ~~membership of the commission shall include representation from~~
1296 ~~minority persons as defined in s. 288.703.~~

1297 (2) If the Legislature decreases the membership of the
1298 commission, all commission member terms of office shall expire
1299 and new members of the commission must be appointed in
1300 accordance with subsection (1). Members appointed to the

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1301 commission may be selected from incumbents ~~A parole~~
1302 ~~qualifications committee shall consist of five persons who are~~
1303 ~~appointed by the Governor and Cabinet. One member shall be~~
1304 ~~designated as chair by the Governor and Cabinet. The committee~~
1305 ~~shall provide for statewide advertisement and the receiving of~~
1306 ~~applications for any position or positions on the commission and~~
1307 ~~shall devise a plan for the determination of the qualifications~~
1308 ~~of the applicants by investigations and comprehensive~~
1309 ~~evaluations, including, but not limited to, investigation and~~
1310 ~~evaluation of the character, habits, and philosophy of each~~
1311 ~~applicant. Each parole qualifications committee shall exist for~~
1312 ~~2 years. If additional vacancies on the commission occur during~~
1313 ~~this 2-year period, the committee may advertise and accept~~
1314 ~~additional applications; however, all previously submitted~~
1315 ~~applications shall be considered along with the new applications~~
1316 ~~according to the previously established plan for the evaluation~~
1317 ~~of the qualifications of applicants.~~

1318 ~~(3) Within 90 days before an anticipated vacancy by~~
1319 ~~expiration of term pursuant to s. 947.03 or upon any other~~
1320 ~~vacancy, the Governor and Cabinet shall appoint a parole~~
1321 ~~qualifications committee if one has not been appointed during~~
1322 ~~the previous 2 years. The committee shall consider applications~~
1323 ~~for the commission seat, including the application of an~~
1324 ~~incumbent commissioner if he or she applies, according to~~
1325 ~~subsection (2). The committee shall submit a list of three~~

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

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

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

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

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

947.12 Members, employees, expenses.—

~~(2) The members of the examining board created in s. 947.02 shall each be paid per diem and travel expenses pursuant~~

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1351 ~~to s. 112.061 when traveling in the performance of their duties.~~

1352 Section 22. Paragraph (g) of subsection (1) and subsection
1353 (5) of section 957.04, Florida Statutes, are amended to read:

1354 957.04 Contract requirements.—

1355 (1) A contract entered into under this chapter for the
1356 operation of contractor-operated correctional facilities shall
1357 maximize the cost savings of such facilities and:

1358 (g) Require the contractor to be responsible for a range
1359 of dental, medical, and psychological services; diet; education;
1360 and work programs at least equal to those provided by the
1361 department in comparable facilities. The work and education
1362 programs must be designed to reduce recidivism, and include
1363 opportunities to participate in such work programs as authorized
1364 pursuant to s. 946.523. However, with respect to the dental,
1365 medical, psychological, and dietary services, the department is
1366 authorized to exclude any or all of these services from a
1367 contract for private correctional services entered into under
1368 this chapter and retain responsibility for the delivery of those
1369 services, whenever the department finds it to be in the best
1370 interests of the state.

1371 ~~(5) Each contract entered into by the department must~~
1372 ~~include substantial minority participation unless demonstrated~~
1373 ~~by evidence, after a good faith effort, as impractical and must~~
1374 ~~also include any other requirements the department considers~~
1375 ~~necessary and appropriate for carrying out the purposes of this~~

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1376 ~~chapter.~~

1377 Section 23. Subsection (3) of section 957.09, Florida
1378 Statutes, is amended to read:

1379 957.09 Applicability of chapter to other provisions of
1380 law.—

1381 ~~(3) The provisions of law governing the participation of~~
1382 ~~minority business enterprises are applicable to this chapter.~~

1383 Section 24. Subsection (2) of section 20.32, Florida
1384 Statutes, is amended to read:

1385 20.32 Florida Commission on Offender Review.—

1386 (2) All powers, duties, and functions relating to the
1387 appointment of the Florida Commission on Offender Review as
1388 provided in s. 947.02 ~~or s. 947.021~~ shall be exercised and
1389 performed by the Governor and Cabinet. ~~Except as provided in s.~~
1390 ~~947.021, each appointment shall be made from among the first~~
1391 ~~three eligible persons on the list of the persons eligible for~~
1392 ~~said position.~~

1393 Section 25. This act shall take effect July 1, 2025.