

House Bill No. 1069

An act relating to the Florida Statutes; amending ss. 110.205, 112.3145, 112.531, 121.0515, 790.001, 922.052, 922.11, 922.12, 922.15, 944.09, 944.115, 944.14, 944.151, 944.28, 944.35, 944.402, 944.516, 945.41, 945.42, 945.43, 945.44, 945.45, 945.46, 945.47, 945.48, 946.25, and 947.26, F.S., pursuant to the directive in s. 7, ch. 99-271, Laws of Florida, to change the term “superintendent” to “warden” wherever it appears in specified provisions of the Florida Statutes.

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

Section 1. Paragraph (l) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions which are not covered by this part include the following, provided that no position, except for positions established for a limited period of time pursuant to paragraph (h), shall be exempted if the position reports to a position in the career service:

(l) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, positions in the Department of Health, the Department of Children and Family Services, and the Department of Corrections that are assigned primary duties of serving as the superintendent or assistant superintendent, or warden or assistant warden, of an institution; positions in the Department of Corrections that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator; positions in the Department of Transportation that are assigned primary duties of serving as regional toll managers and managers of offices as defined in s. 20.23(3)(d)3. and (4)(d); positions in the Department of Environmental Protection that are assigned the duty of an Environmental Administrator or program administrator; those positions described in s. 20.171 as included in the Senior Management Service; and positions in the Department of Health that are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules established for the Selected Exempt Service.

Section 2. Paragraph (b) of subsection (1) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(b) “Specified state employee” means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a full-time state employee who serves as counsel or assistant counsel to any state agency, a judge of compensation claims, an administrative law judge, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. Each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the warden superintendent or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

7. Each employee of the Commission on Ethics.

Section 3. Subsection (2) of section 112.531, Florida Statutes, is amended to read:

112.531 Definitions.—As used in this part:

(2) “Correctional officer” means any person, other than a warden superintendent, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.

Section 4. Paragraph (c) of subsection (2) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special risk membership; criteria; designation and removal of classification; credits for past service and prior service; retention of special risk normal retirement date.—

(2) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(c) The member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included; however, wardens superintendents and assistant wardens superintendents shall participate in the Special Risk Class; or

Section 5. Paragraph (d) of subsection (8) of section 790.001, Florida Statutes, is amended to read:

790.001 Definitions.—As used in this chapter, except where the context otherwise requires:

(8) "Law enforcement officer" means:

(d) An employee of the state prisons or correctional systems who has been so designated by the Department of Corrections or by a warden superintendent of an institution;

Section 6. Subsection (1) of section 922.052, Florida Statutes, is amended to read:

922.052 Issuance of warrant of execution.—

(1) When a person is sentenced to death, the clerk of the court shall prepare a certified copy of the record of the conviction and sentence, and the sheriff shall send the record to the Governor. The sentence shall not be executed until the Governor issues a warrant, attaches it to the copy of the record, and transmits it to the warden superintendent, directing the warden superintendent to execute the sentence at a time designated in the warrant.

Section 7. Subsections (1) and (2) of section 922.11, Florida Statutes, are amended to read:

922.11 Regulation of execution.—

(1) The warden superintendent of the state prison or a deputy designated by him or her shall be present at the execution. The warden superintendent

shall set the day for execution within the week designated by the Governor in the warrant.

(2) Twelve citizens selected by the ~~warden~~ superintendent shall witness the execution. A qualified physician shall be present and announce when death has been inflicted. Counsel for the convicted person and ministers of religion requested by the convicted person may be present. Representatives of news media may be present under rules approved by the Secretary of Corrections. All other persons, except prison officers and correctional officers, shall be excluded during the execution.

Section 8. Section 922.12, Florida Statutes, is amended to read:

922.12 Return of warrant of execution issued by Governor.—After the death sentence has been executed, the ~~warden~~ superintendent of the state prison shall send the warrant and a signed statement of the execution to the Secretary of State. The ~~warden~~ superintendent shall file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.

Section 9. Section 922.15, Florida Statutes, is amended to read:

922.15 Return of warrant of execution issued by Supreme Court.—After the sentence has been executed pursuant to a warrant issued by the Supreme Court, the ~~warden~~ superintendent of the state prison shall send the warrant and a signed statement of the execution to the Secretary of State. The ~~warden~~ superintendent shall file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence. The ~~warden~~ superintendent shall send to the Governor an attested copy of the warrant and statement.

Section 10. Paragraph (n) of subsection (1) and subsection (2) of section 944.09, Florida Statutes, are amended to read:

944.09 Rules of the department; offenders, probationers, and parolees.—

(1) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement its statutory authority. The rules must include rules relating to:

(n) Visiting hours and privileges. The rules shall provide that any inmate with a current or prior conviction for any offense contained in chapter 794, chapter 800, chapter 827, or chapter 847 for committing or attempting to commit aggravated child abuse or committing or attempting to commit a sex act on, in the presence of, or against a child under the age of 16 years, shall not be allowed visitation with anyone under the age of 18 years, unless special visitation is approved by the ~~warden~~ superintendent. The authorization for special visitation shall be based on extenuating circumstances that serve the interest of the children. If visiting is restricted by court order, permission for special visitation may be granted only by the judge issuing the order.

(2) It is the duty of the ~~wardens~~ superintendents to supervise the governance, discipline, and policy of the state correctional institutions and to enforce all orders and rules.

Section 11. Paragraph (b) of subsection (3) of section 944.115, Florida Statutes, is amended to read:

944.115 Smoking prohibited inside state correctional facilities.—

(3)

(b)1. An employee or visitor may not use any tobacco products in prohibited areas.

2. The ~~superintendent~~, warden, or supervisor of a state correctional facility shall take reasonable steps to ensure that the tobacco prohibition for employees and visitors is strictly enforced.

Section 12. Section 944.14, Florida Statutes, is amended to read:

944.14 Supervision of correctional institutions; enforcement of orders and regulations.—Subject to the orders, policies, and regulations established by the department, it shall be the duty of the wardens ~~or superintendents~~ to supervise the government, discipline, and policy of the state correctional institutions, and to enforce all orders, rules and regulations.

Section 13. Subsection (1) of section 944.151, Florida Statutes, is amended to read:

944.151 Security of correctional institutions; legislative intent; periodic physical inspection of facilities; security audits; reports of security audits; procedures in the event of escapes; annual budget request.—It is the intent of the Legislature that the Department of Corrections shall be responsible for the security of the correctional institutions and facilities. The security of the state's correctional institutions and facilities is critical to ensure public safety and to contain violent and chronic offenders until offenders are otherwise released from the department's custody pursuant to law. The Secretary of Corrections shall, at a minimum:

(1) Appoint a security review committee which shall, at a minimum, be composed of: the inspector general, the statewide security coordinator, the regional security coordinators, and three ~~wardens superintendents~~ and one correctional officer. The security review committee shall:

(a) Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution to determine security deficiencies. In scheduling the inspections, priority shall be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts in the past.

(b) Conduct or cause to be conducted announced and unannounced comprehensive security audits of all state and private correctional institutions. In conducting the security audits, priority shall be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts. At a minimum, the audit shall include an evaluation of the physical plant,

landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies. Each correctional institution shall be audited at least annually. The secretary shall report the general survey findings annually to the Governor and the Legislature.

(c) Adopt and enforce minimum security standards and policies that include, but are not limited to:

1. Random monitoring of outgoing telephone calls by inmates.
2. Maintenance of current photographs of all inmates.
3. Daily inmate counts at varied intervals.
4. Use of canine units, where appropriate.
5. Use of escape alarms and perimeter lighting.
6. Florida Crime Information Center/National Crime Information Center capabilities.
7. Employment background investigations.

(d) Annually make written prioritized budget recommendations to the secretary that identify critical security deficiencies at major correctional institutions.

(e) Investigate and evaluate the usefulness and dependability of existing security technology at the institutions and new technology available and make periodic written recommendations to the secretary on the discontinuation or purchase of various security devices.

(f) Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts the committee deems necessary for security audits and security consultant services.

(g) Establish a periodic schedule for conducting announced and unannounced escape simulation drills.

Section 14. Paragraph (c) of subsection (2) and subsection (3) of section 944.28, Florida Statutes, are amended to read:

944.28 Forfeiture of gain-time and the right to earn gain-time in the future.—

(2)

(c) The method of declaring a forfeiture under paragraph (a) or paragraph (b) shall be as follows: A written charge shall be prepared, which shall specify each instance of misconduct upon which it is based and the approximate date thereof. A copy of such charge shall be delivered to the prisoner, and he or she shall be given notice of a hearing before the disciplinary committee created under the authorization of rules heretofore or hereafter adopted by the department for the institution in which he or she is confined.

The prisoner shall be present at the hearing. If at such hearing the prisoner pleads guilty to the charge or if the committee determines that the prisoner is guilty thereof upon the basis of proof presented at such hearing, it shall find him or her guilty. If the committee considers that all or part of the prisoner's gain-time and the prisoner's right to earn gain-time during all or any part of the sentence or sentences under which he or she is imprisoned shall be forfeited, it shall so recommend in its written report. Such report shall be presented to the warden superintendent of the institution, who may approve such recommendation in whole or in part by endorsing such approval on the report. In the event of approval, the warden superintendent shall forward the report to the department. Thereupon, the department may, in its discretion, declare the forfeiture thus approved by the warden superintendent or any specified part thereof.

(3) Upon the recommendation of the warden superintendent, the department may, in its discretion, restore all or any part of any gain-time forfeited under this section.

Section 15. Paragraph (b) of subsection (1), subsection (2), and paragraph (d) of subsection (3) of section 944.35, Florida Statutes, are amended to read:

944.35 Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.—

(1)

(b) Following any use of force, a qualified health care provider shall examine any person physically involved to determine the extent of injury, if any, and shall prepare a report which shall include, but not be limited to, a statement of whether further examination by a physician is necessary. Any noticeable physical injury shall be examined by a physician and the physician shall prepare a report documenting the extent and probable cause of the injury and the treatment prescribed. Such report shall be completed within 5 working days of the incident and shall be submitted to the warden superintendent for appropriate investigation.

(2) Each employee of the department who either applies physical force or was responsible for making the decision to apply physical force upon an inmate or an offender supervised by the department in the community pursuant to this subsection shall prepare, date, and sign an independent report within 5 working days of the incident. The report shall be delivered to the warden superintendent or the regional administrator, who shall have an investigation made and shall approve or disapprove the force used. The employee's report, together with the warden's superintendent's or regional administrator's written approval or disapproval of the force used and the reasons therefor, shall be forwarded within 5 working days of the date of the completion of the investigation to the regional director. The regional director shall, in writing, concur in the warden's superintendent's or regional administrator's evaluation or disapprove it. Copies of the employee's report, the warden's superintendent's or regional administrator's evaluation, and the regional director's review shall be kept in the files of the inmate or the offender supervised by the department in the community. A notation of each

incident involving use of force and the outcome based on the warden's superintendent's or regional director's evaluation and the regional administrator's review shall be kept in the employee's file.

(3)

(d) Each employee who witnesses, or has reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct pursuant to this subsection shall immediately prepare, date, and sign an independent report specifically describing the nature of the force used or the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The report shall be delivered to the inspector general of the department with a copy to be delivered to the warden superintendent of the institution or the regional administrator. The inspector general shall immediately conduct an appropriate investigation, and, if probable cause is determined that a violation of this subsection has occurred, the respective state attorney in the circuit in which the incident occurred shall be notified.

Section 16. Section 944.402, Florida Statutes, is amended to read:

944.402 Reward for capture of escapee from correctional institution.—The warden superintendent of a state correctional institution may pay a reward in an amount not greater than \$100 from institutional funds to each person who is directly responsible for the capture of an inmate who has escaped from the institution. The warden superintendent of the institution from which the inmate escaped shall determine the amount of the reward. Employees of state, county, and municipal law enforcement or correctional agencies who are engaged in the apprehension, detection, or detention of prisoners are not eligible to receive such rewards.

Section 17. Section 944.516, Florida Statutes, is amended to read:

944.516 Money or other property received for personal use or benefit of inmate; deposit; disposition of unclaimed trust funds.—The Department of Corrections shall protect the financial interest of the state with respect to claims which the state may have against inmates in state institutions under its supervision and control and shall administer money and other property received for the personal benefit of such inmates. In carrying out the provisions of this section, the department may delegate any of its enumerated powers and duties affecting inmates of an institution to the warden superintendent or regional director who shall personally, or through designated employees of his or her personal staff under his or her direct supervision, exercise such powers or perform such duties.

(1) The Department of Corrections may:

(a) Accept and administer as a trust any money or other property received for the personal use or benefit of any inmate.

(b) Deposit money so received in banks qualified as state depositories.

(c) Withdraw any such money and use it to meet the current needs of the inmate as they may exist from time to time.

(d) As trustee, invest in the manner authorized by law for fiduciaries such moneys not required to be used for current needs of the inmate.

(e) Commingle such moneys for the purpose of deposit or investment.

(f) Use interest earned from investments to replace any funds belonging to an inmate which have been stolen, lost, or otherwise misappropriated from the inmate's trust account through no fault of the state and which cannot be replaced by appropriated funds, insurance payments, or other available resources. Such use of interest may be made only if, pursuant to a thorough investigation as part of the normal auditing process, the internal auditor of the department recommends in a written report that such use is appropriate. The report may also recommend other action, including prosecution, with respect to any missing funds. If the internal auditor of the department concludes that the department is at fault, the loss shall be replaced out of department funds; interest from the inmate trust fund may not be used to replace such loss.

(g) Establish, by rule, a limit on each inmate's trust account, including the interest earned thereon, and deduct from any moneys in the inmate's trust account exceeding that limit moneys sufficient to pay for the cost of postage of any mail sent by the inmate which postage the state is not constitutionally required to pay.

(2) The department shall require documentation through an accounting of receipts for expenditures by inmates placed on extended limits of confinement pursuant to s. 945.091. However, the department may allow such inmates an amount up to \$25 per week which may not require documentation and which may be used for discretionary needs. The \$25 per week may be increased by \$5 biennially, beginning in fiscal year 1985-1986, up to a total of \$50.

(3) Moneys received by the department in payment of claims of the state against inmates shall be transmitted to the Treasurer for deposit into the General Revenue Fund.

(4) Upon the death of any inmate in an institution affected by the provisions of this section, any unclaimed money held for the inmate in trust by the department or by the Treasurer shall be applied first to the payment of any unpaid state claim against the inmate, and any balance remaining unclaimed for a period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) When an inmate is transferred between department facilities, is released from the custody of the department, dies, or escapes during incarceration, and the inmate has an unexpended inmate trust fund account balance of less than \$1, that balance shall be transferred to the Inmate Welfare Trust Fund.

Section 18. Subsection (4) of section 945.41, Florida Statutes, is amended to read:

945.41 Legislative intent of ss. 945.40-945.49.—It is the intent of the Legislature that mentally ill inmates in the custody of the Department of Corrections receive evaluation and appropriate treatment for their mental illness through a continuum of services. It is further the intent of the Legislature that:

(4) Any inmate sentenced as a youthful offender, or designated as a youthful offender by the department pursuant to chapter 958, who is transferred pursuant to this act to a mental health treatment facility be separated from other inmates, if necessary, as determined by the warden superintendent of the treatment facility. In no case shall any youthful offender be placed at the Florida State Prison or the Union Correctional Institution for mental health treatment.

Section 19. Subsection (12) of section 945.42, Florida Statutes, is amended to read:

945.42 Definitions.—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:

(12) “Warden” ~~“Superintendent”~~ means the warden superintendent of a state corrections facility or his or her designee.

Section 20. Paragraphs (a) and (c) of subsection (2) and subsections (3) and (4) of section 945.43, Florida Statutes, are amended to read:

945.43 Admission of inmate to mental health treatment facility.—

(2) ADMISSION TO A MENTAL HEALTH TREATMENT FACILITY.—

(a) An inmate may be admitted to a mental health treatment facility after notice and hearing, upon the recommendation of the warden superintendent of the facility where the inmate is confined and of the director. The recommendation shall be entered on a certificate and must be supported by the expert opinion of a psychiatrist and the second opinion of a psychiatrist or psychologist. The certificate shall be filed with the court in the county where the inmate is located and shall serve as a petition for a hearing regarding placement.

(c) The petition may be filed in the county in which the inmate is being treated at any time within 6 months of the date of the certificate. The hearing shall be held in the same county, and one of the inmate's physicians at the facility shall appear as a witness at the hearing. If the court finds that the inmate is mentally ill and in need of care and treatment, it shall order that he or she be admitted to a mental health treatment facility or, if the inmate is at a mental health treatment facility, that he or she be retained there. However, the inmate may be immediately transferred to and admitted at a mental health treatment facility by executing a waiver of the hearing by express and informed consent, without awaiting the court order. The court shall authorize the mental health treatment facility to retain the inmate for up to 6 months. If, at the end of that time, continued treatment is necessary, the warden superintendent shall apply to the court for an order authorizing continued placement.

(3) PROCEDURE FOR HEARING ON TRANSFER OF AN INMATE FOR MENTAL HEALTH TREATMENT.—If the inmate does not waive a hearing or if the inmate or the inmate's representative files a petition for a hearing after having waived it, the court shall serve notice on the warden superintendent of the facility where the inmate is confined, the director, and the allegedly mentally ill inmate. The notice shall specify the date, time, and place of the hearing; the basis for the allegation of mental illness; and the names of the examining experts. The hearing shall be held within 5 days, and the court may appoint a master to preside. The hearing may be as informal as is consistent with orderly procedure. One of the experts whose opinion supported the recommendation shall be present at the hearing for information purposes. If, at the hearing, the court finds that the inmate is mentally ill and in need of care and treatment, it shall order that he or she be transferred to a mental health treatment facility and provided appropriate treatment. The court shall provide a copy of its order authorizing transfer and all supporting documentation relating to the inmate's condition to the warden superintendent of the treatment facility. If the court finds that the inmate is not mentally ill, it shall dismiss the petition for transfer.

(4) ADMISSION; WHEN REFUSAL ALLOWED.—The warden superintendent of a treatment facility may refuse to admit any inmate who is not accompanied by adequate court orders and documentation, as required in ss. 945.40-945.49.

Section 21. Subsection (2) of section 945.44, Florida Statutes, is amended to read:

945.44 Emergency admission of inmate to mental health treatment facility.—

(2) PROCEDURE FOR EMERGENCY ADMISSION.—An inmate who is mentally ill and in immediate need of care and treatment which cannot be provided at the institution where he or she is confined may be admitted to a mental health treatment facility on an emergency basis. The inmate may be transferred immediately to the facility and shall be accompanied by the recommendation of the warden superintendent of the institution where the inmate is confined, which recommendation shall state the need for the transfer and shall include a written opinion of a physician verifying the need for transfer. Upon the admission of the inmate to the facility, the inmate shall be evaluated; if he or she is determined to be in need of treatment or care, the warden superintendent shall initiate proceedings for placement of the inmate, as described in s. 945.43(2).

Section 22. Subsection (1) of section 945.45, Florida Statutes, is amended to read:

945.45 Procedure for continued placement of inmates.—

(1) If continued placement of an inmate is necessary, the warden superintendent shall, prior to the expiration of the period during which the treatment facility is authorized to retain the inmate, request an order authorizing continued placement. This request shall be accompanied by a statement from the inmate's physician justifying the request and a brief summary of

the inmate's treatment during the time he or she has been placed. In addition, the warden superintendent shall submit an individualized plan for the inmate for whom he or she is requesting continued placement. Notification of this request for retention shall be mailed to the inmate and the inmate's representative along with a completed petition, requesting only a signature and a waiver-of-hearing form. The waiver-of-hearing form shall require express and informed consent and shall state that the inmate is entitled to a hearing under the law; that the inmate is entitled to be represented by an attorney at the hearing and that, if the inmate cannot afford an attorney, one will be appointed; and that, if it is shown at the hearing that the inmate does not meet the criteria for continued placement, he or she will be transferred to another facility of the department. If the inmate or the inmate's representative does not sign the petition, or if the inmate does not sign a waiver within 15 days, the administrative law judge shall notice a hearing with regard to the inmate involved in accordance with ss. 120.569 and 120.57(1).

Section 23. Section 945.46, Florida Statutes, is amended to read:

945.46 Initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.—If an inmate who is receiving mental health treatment in the department is scheduled for release through expiration of sentence or any other means, but continues to be mentally ill and in need of care and treatment, the warden superintendent is authorized to initiate procedures for involuntary placement pursuant to the provisions of s. 394.467, 60 days prior to such release.

Section 24. Subsection (1) of section 945.47, Florida Statutes, is amended to read:

945.47 Discharge of inmate from mental health treatment.—

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

(a) If the inmate is no longer in need of care and treatment, he or she may be transferred to another institution in the department;

(b) If the inmate continues to be mentally ill, but is not in need of care and treatment as an inpatient, he or she may be transferred to another institution in the department and provided appropriate outpatient and aftercare services;

(c) 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 recommendation for outpatient treatment, pursuant to the provisions of ss. 945.40-945.49; or

(d) If the inmate's sentence expires and he or she continues to be mentally ill and in need of care and treatment, the warden superintendent shall initiate proceedings for involuntary placement, pursuant to s. 394.467.

Section 25. Paragraphs (a), (b), and (d) of subsection (2) of section 945.48, Florida Statutes, are amended to read:

945.48 Rights of inmate provided treatment.—

(2) RIGHT TO EXPRESS AND INFORMED CONSENT.—Any inmate provided psychiatric treatment within the department shall be asked to give his or her express and informed written consent for such treatment. “Express and informed written consent” or “consent” means consent voluntarily given in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment; the common side effects of the treatment, if any; the expected duration of the treatment; and the alternative treatment available. The explanation shall enable the inmate to make a knowing and willful decision without any element of fraud, deceit, or duress or any other form of constraint or coercion. Involuntary mental health treatment of an inmate who refuses treatment that is deemed to be necessary for the appropriate care of the inmate and the safety of the inmate or others may be provided at an institution authorized to do so by the Assistant Secretary for Health Services under the following circumstances:

(a) In an emergency situation in which there is immediate danger to the health and safety of the inmate or other inmates, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the inmate has not given express and informed consent to the treatment initially refused, the ~~warden superintendent~~ shall, within 48 hours, excluding weekends and legal holidays, petition the circuit court serving the county in which the facility is located for an order authorizing the continued treatment of the inmate. In the interim, treatment may be continued upon the written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the inmate or others. If an inmate must be isolated for mental health purposes, that decision must be reviewed within 72 hours by medical staff different from that making the original placement.

(b) In a situation other than an emergency situation, the ~~warden superintendent~~ shall petition the court for an order authorizing the treatment of the inmate. The order shall allow such treatment for a period not to exceed 90 days from the date of the order. Unless the court is notified in writing that the inmate has provided express and informed consent in writing, that the inmate has been transferred to another institution of the department, or that the inmate is no longer in need of treatment, the ~~warden superintendent~~ shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the inmate provides consent or is no longer in need of treatment. Treatment may be continued pending a hearing after the filing of any petition.

(d) In addition to the above provisions, when the permission of the inmate cannot be obtained, the ~~warden superintendent~~ of a mental health treatment facility, or his or her designated representative, with the concurrence of the inmate’s attending physician, may authorize emergency surgi-

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

Section 26. Section 946.25, Florida Statutes, is amended to read:

946.25 Sale of hobbycrafts by prisoners.—When, in the planning of the rehabilitation program of the Department of Corrections through its recreational facilities, plans are made for prisoners to engage in hobbies and hobbycrafts after their normal working hours and when they are not required by the ~~superintendent~~ or warden of a state prison or correctional institution to be on their assigned duties, they may make items of a hobby or hobbycraft nature which may be disposed of by the prisoner through the institutional canteen or commissary to persons visiting the institution.

Section 27. Section 947.26, Florida Statutes, is amended to read:

947.26 Cooperation of custodian of prisoner; right of access.—The ~~superintendent~~, warden, or jailer of any jail or prison in which persons convicted of crime may be confined and all officers or employees thereof shall at all times cooperate with the commission and, upon its request, shall furnish it with such information as they may have respecting any person inquired about as will enable the commission properly to perform its duties. Such officials shall, at all reasonable times, when the public safety permits, give the members of the commission and its authorized agents and employees access to all prisoners in their charge.

Reviser's note.—Amended pursuant to the directive in s. 7, ch. 99-271, Laws of Florida, to change the term "superintendent" to "warden" wherever it appears in specified provisions of the Florida Statutes.

Approved by the Governor May 25, 2000.

Filed in Office Secretary of State May 25, 2000.