

CHAPTER 2025-81

Committee Substitute for Committee Substitute for House Bill No. 903

An act relating to corrections; amending s. 57.085, F.S.; revising provisions relating to deferral of prepayment of court costs and fees for indigent prisoners for actions involving challenges to prison disciplinary reports; amending s. 95.11, F.S.; providing for a 1-year period of limitation for bringing certain actions relating to the condition of confinement of prisoners; creating s. 760.701, F.S.; defining the term “prisoner”; requiring exhaustion of administrative remedies before certain actions concerning confinement of prisoners may be brought; providing for dismissal of certain actions involving prisoner confinement in certain circumstances; requiring a showing of physical injury or the commission of a certain act as a condition precedent for bringing certain actions relating to prisoner confinement; specifying a time limitation period for bringing an action concerning any condition of confinement; amending s. 775.087, F.S.; providing that prison terms for certain offenses committed in conjunction with another felony offense may be sentenced to be served consecutively; amending ss. 922.10 and 922.105, F.S.; revising provisions concerning methods of execution of death sentences; amending s. 934.425, F.S.; exempting persons working for the Department of Corrections or the Department of Juvenile Justice, or persons authorized pursuant to a court order, from provisions regulating the use of tracking devices or tracking applications; amending s. 945.41, F.S.; revising legislative intent; revising provisions relating to mental health treatment for inmates; providing that an inmate must give his or her express and informed consent to such treatment; specifying information an inmate must receive regarding treatment; authorizing the warden to authorize certain emergency medical treatment under the direction of the inmate’s attending physician under certain circumstances; amending s. 945.42, F.S.; revising and providing definitions; amending s. 945.43, F.S.; revising provisions concerning involuntary examinations; amending s. 945.44, F.S.; revising provisions concerning involuntary placement and treatment of an inmate in a mental health treatment facility; repealing s. 945.45 F.S., relating to continued placement of inmates in mental health treatment facilities; amending s. 945.46, F.S.; providing requirements for filing petitions for involuntary inpatient placement for certain inmates; authorizing the court to order alternative means and venues for certain hearings; requiring, rather than authorizing, inmates to be transported to the nearest receiving facility in certain circumstances; amending s. 945.47, F.S.; specifying purposes for which an inmate’s mental health treatment records may be provided to the Florida Commission on Offender Review and the Department of Children and Families; authorizing such records to be provided to certain facilities upon request; amending s. 945.48, F.S.; substantially rewording provisions relating to emergency treatment orders and use of force and providing requirements therefore; providing

requirements for emergency and psychotropic medications and use of force; creating s. 945.485, F.S.; providing legislative findings; providing requirements for management and treatment for an inmate's self-injurious behaviors; requiring facility wardens to consult with an inmate's treating physician in certain circumstances and make certain determinations; providing for petitions to compel an inmate to submit to medical treatment in certain circumstances; providing construction; amending s. 945.49, F.S.; removing a requirement that the Department of Corrections adopt certain rules in cooperation with the Mental Health Program Office of the Department of Children and Families; creating s. 945.6402, F.S.; providing definitions; providing legislative findings and intent; providing requirements for inmate capacity, health care advance directives, and proxies; authorizing the use of force on incapacitated inmates in certain circumstances; providing immunity from liability for certain persons in certain circumstances; amending s. 947.02, F.S.; revising the manner in which the membership of the Florida Commission on Offender Review is appointed; repealing s. 947.021, F.S., relating to expedited appointments of the Florida Commission on Offender Review; amending s. 947.12, F.S.; conforming provisions to changes made by the act; amending s. 957.04, F.S.; revising requirements for contracting for certain services; amending s. 957.09, F.S.; removing a provision relating to minority business enterprises; amending s. 20.32, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

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

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

(2) WITHIN FIVE YEARS.—

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

(6) WITHIN ONE YEAR.—

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

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

(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, pretrial release, or diversionary program.

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

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

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

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

Section 4. Paragraph (d) of subsection (2) of section 775.087, Florida Statutes, is amended, paragraph (e) is added to 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;
- n. Home-invasion robbery;
- o. Aggravated stalking;
- p. 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);

q. Possession of a firearm by a felon; or

r. Human trafficking

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

2. Any person who is convicted of a felony or an attempt to commit a felony listed in sub-subparagraphs 1.a.-p. or sub-subparagraph 1.r., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a “firearm” or “destructive device” as 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 minimum term terms of imprisonment required under paragraph (a) imposed pursuant to this subsection shall be imposed for each qualifying felony offense count for which the person is convicted. If the offender is convicted of multiple felony offenses for which paragraph (a) requires the imposition of a minimum term of imprisonment, the court shall impose any such terms term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.

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

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

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

r. Human trafficking

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

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

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

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

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

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

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

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

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 constitutional method of execution.

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

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

(4) This section does not apply to:

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

(c) A juvenile probation officer, an authorized agent or designee, or delinquency program staff, as those terms are defined in s. 985.03, of the Department of Juvenile Justice who lawfully installs, places, or uses a

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

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

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

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

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

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

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

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

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

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

(d)(1) Inmates in the custody of the department who have mental illnesses that require hospitalization and intensive mental health psychiatric inpatient treatment and services or care shall be offered receive appropriate treatment or care in an inpatient setting Department of Corrections mental health treatment facilities designated for that purpose.

Inmates who have mental illnesses that require intensive hospitalization-level mental health inpatient treatment and services shall be transferred to a department mental health treatment facility designated for that purpose. The Department of Corrections shall provide mental health services to inmates committed to it and may contract with any entities, persons, or agencies qualified to provide such services.

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

(3) EXPRESS AND INFORMED CONSENT.—

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

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

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

(4)(3) PAROLE.—Inmates who are transferred to any facility for the purpose of mental health treatment and services shall be given consideration for parole and be eligible for release by reason of gain-time allowances as

provided in s. 944.291 and release by expiration of sentence, consistent with guidelines established for that purpose by the department.

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

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

(7) EMERGENCY MEDICAL TREATMENT.—Notwithstanding any other provision of this section, when the express and informed consent 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 and services ~~are~~ is also more intense than treatment and services provided in a transitional care unit and are ~~is~~ devoted principally toward rapid stabilization of acute symptoms and conditions.

(3) “Department” means the Department of Corrections.

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

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

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

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

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

~~(4) “Director” means the Director for Mental Health Services of the Department of Corrections or his or her designee.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(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 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 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 defendants who are incompetent to proceed as defined in s. 916.106.

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

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

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

945.43 Involuntary examination.—

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

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

(3) If, after the examination, the inmate is determined to be in need of care and treatment, the psychiatrist shall propose a recommended course of treatment that is essential to the care of the inmate and the warden shall initiate proceedings for placement of the inmate in the mental health treatment facility and for involuntary treatment of the inmate as specified in s. 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 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 the inmate or in conducting onsite hearings, the court may order that the hearing be conducted by electronic means or in person at the facility or at another location designated by the court. If the hearing is ordered by the court to be conducted at a location other than the facility, the department is authorized to transport the inmate to the location of the hearing.

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

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

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

(3) ORDERS FOR INVOLUNTARY PLACEMENT AND TREATMENT.

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

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

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

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

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

Section 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 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 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 recommendation for outpatient treatment, pursuant to the provisions of ss. 945.40-945.49.

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

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

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

945.48 Emergency treatment orders and use of force.—

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

(a) Bodily harm to self or others; or

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

(2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may be administered only when the medication constitutes an appropriate treatment for a mental illness and its symptoms and alternative treatments are not available or indicated, or would not be effective. If after the 72-hour period the inmate has not given express and informed consent to the medication initially refused, the inmate's treating physician shall refer the inmate to a mental health treatment facility for an involuntary examination in accordance with the procedures described in s. 945.43. Upon such referral, the warden shall, within 48 hours, excluding weekends and legal holidays,

transfer the inmate to a mental health treatment facility. Upon transfer of the inmate for an involuntary examination, the emergency treatment order may be continued upon the written order of a physician as long as the physician has determined that the emergency continues to present a danger to the safety of the inmate or others and the criteria described in this subsection are satisfied. If psychotropic medication is still recommended after the emergency, it may only be administered after following the procedures outlined in s. 945.44.

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

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

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

(3) When an inmate is engaging in active or ongoing self-injurious behavior and has refused to provide express and informed consent for treatment related to the self-injurious behavior, the warden of the facility where the inmate is housed shall consult with the inmate's treating physician regarding the inmate's medical and mental health status, current medical and mental health treatment needs, and competency to provide express and informed consent for treatment. The warden shall also determine whether the inmate's self-injurious behavior presents a danger

to the safety of department staff or other inmates or the security, internal order, or discipline of the institution.

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

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

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

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

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

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

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

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

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

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

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

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

945.49 Operation and administration.—

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

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

945.6402 Inmate health care advance directives.—

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

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

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

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

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

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

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

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

(2) LEGISLATIVE FINDINGS AND INTENT.—

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

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

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

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

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

(3) CAPACITY OF INMATE; PROCEDURE.—

(a) An inmate is presumed to be capable of making health care decisions for himself or herself unless he or she is determined to be incapacitated. When an inmate has decisionmaking capacity, the inmate's wishes are controlling. Each physician or health care provider must clearly communicate the treatment plan and any change to the treatment plan before implementation of the plan or any change to the plan. Incapacity may not be

inferred from an inmate's involuntary hospitalization for mental illness or from his or her intellectual disability.

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

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

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

(4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.—

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

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

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

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

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

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

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

(5) PROXY.—

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

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

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

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

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

(f) Notwithstanding s. 456.057 and pursuant to s. 945.10 and 45 C.F.R. part 164, subpart E, relevant protected health information and mental

health and medical records of an incapacitated inmate may be disclosed to a proxy appointed to make health care decisions for an inmate.

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

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

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

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

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

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

~~(3) Within 90 days before an anticipated vacancy by expiration of term pursuant to s. 947.03 or upon any other vacancy, the Governor and Cabinet~~

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

~~(4) Upon receiving a list of eligible persons from the parole qualifications committee, the Governor and Cabinet may reject the list. If the list is rejected, the committee shall reinstate 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 to s. 112.061 when traveling in the performance of their duties.~~

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

957.04 Contract requirements.—

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

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

services entered into under this chapter and retain responsibility for the delivery of those services, whenever the department finds it to be in the best interests of the state.

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

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

957.09 Applicability of chapter to other provisions of law.—

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

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

20.32 Florida Commission on Offender Review.—

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

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

Approved by the Governor May 22, 2025.

Filed in Office Secretary of State May 22, 2025.