

1                   A bill to be entitled  
2           An act relating to health care for inmates; amending  
3           s. 945.41, F.S.; revising and providing legislative  
4           intent; providing construction; providing for  
5           individual dignity and treatment; providing for  
6           express and informed consent and emergency medical  
7           treatment; amending s. 945.42, F.S.; defining,  
8           revising, and deleting terms; amending s. 945.43,  
9           F.S.; substantially rewording provisions concerning  
10          involuntary examinations of inmates and providing  
11          requirements therefor; amending s. 945.44, F.S.;  
12          substantially rewording provisions relating to  
13          placement and treatment of an inmate in a mental  
14          health treatment facility and providing requirements  
15          therefor; repealing s. 945.45, F.S., relating to  
16          continued placement of inmates in mental health  
17          treatment facilities; amending s. 945.46, F.S.;  
18          providing requirements for filing petitions for  
19          involuntary inpatient placement for certain inmates;  
20          authorizing the court to order alternative means and  
21          venues for certain hearings; requiring, rather than  
22          authorizing, inmates to be transported to the nearest  
23          receiving facility in certain circumstances; amending  
24          s. 945.47, F.S.; specifying purposes for which an  
25          inmate's mental health treatment records may be

26 | provided to the Florida Commission on Offender Review  
27 | and the Department of Children and Families;  
28 | authorizing such records to be provided to certain  
29 | facilities upon request; amending s. 945.48, F.S.;  
30 | substantially rewording provisions relating to  
31 | emergency treatment orders and use of force and  
32 | providing requirements therefor; providing  
33 | requirements for emergency and psychotropic  
34 | medications and use of force; creating s. 945.485,  
35 | F.S.; providing requirements for management and  
36 | treatment for self-injurious behaviors; providing  
37 | legislative findings; requiring facility wardens to  
38 | consult with an inmate's treating physician in certain  
39 | circumstances and make certain determinations;  
40 | providing for petitions to compel an inmate to submit  
41 | to medical treatment in certain circumstances;  
42 | providing construction; amending s. 945.49, F.S.;  
43 | deleting a requirement that the Department of  
44 | Corrections adopt certain rules in cooperation with  
45 | the Mental Health Program Office of the Department of  
46 | Children and Families; creating s. 945.6042, F.S.;  
47 | providing definitions; providing legislative findings  
48 | and intent; providing requirements for inmate  
49 | capacity, health care advance directives, and proxies;  
50 | authorizing use of force on incapacitated inmates in

51 certain circumstances; providing immunity from  
 52 liability for certain persons in certain  
 53 circumstances; providing an effective date.

54  
 55 Be It Enacted by the Legislature of the State of Florida:

56  
 57 Section 1. Section 945.41, Florida Statutes, is amended to  
 58 read:

59 945.41 Mental health treatment for inmates; legislative  
 60 intent of ss. 945.40-945.49.—

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

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

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

73 (c) Sections 945.40-945.49 do not supplement, amend, or  
 74 change the responsibilities of the Department of Children and  
 75 Families pursuant to chapter 916, the Forensic Client Services

76 Act, which governs forensic services for persons who are  
 77 incompetent to proceed as defined in s. 916.106.

78 (2) INDIVIDUAL DIGNITY AND TREATMENT.—

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

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

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

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

101 level mental health inpatient treatment and services shall be  
102 transferred to a department mental health treatment facility  
103 designated for that purpose ~~The Department of Corrections shall~~  
104 ~~provide mental health services to inmates committed to it and~~  
105 ~~may contract with any entities, persons, or agencies qualified~~  
106 ~~to provide such services.~~

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

117 (3) EXPRESS AND INFORMED CONSENT.—

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

- 123 1. The reason for treatment.
- 124 2. The proposed treatment.
- 125 3. The purpose of the treatment.

126        4. The common risks, benefits, and side effects of the  
 127 treatment and the specific dosage range for a medication, if  
 128 applicable.

129        5. Alternative treatment modalities.

130        6. The approximate length of treatment.

131        7. The potential effects of stopping treatment.

132        8. How treatment will be monitored.

133        9. That any consent given for treatment may be revoked  
 134 orally or in writing before or during the treatment period by  
 135 the inmate or by a person legally authorized to make health care  
 136 decisions on behalf of the inmate.

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

142        (4)-(3) PAROLE.—Inmates who are transferred to any facility  
 143 for the purpose of mental health treatment and services shall be  
 144 given consideration for parole and be eligible for release by  
 145 reason of gain-time allowances as provided in s. 944.291 and  
 146 release by expiration of sentence, consistent with guidelines  
 147 established for that purpose by the department.

148        (5)-(4) YOUTHFUL OFFENDERS.—Any inmate sentenced as a  
 149 youthful offender, or designated as a youthful offender by the  
 150 department under chapter 958, who is transferred pursuant to

151 | this act to a mental health treatment facility shall be  
 152 | separated from other inmates, if necessary, as determined by the  
 153 | warden of the mental health treatment facility.

154 | (6)-(5) TREATMENT FACILITIES.—The department may designate  
 155 | mental health treatment facilities for adult, youthful, and  
 156 | female offenders or may contract with other appropriate  
 157 | entities, persons, or agencies for such services.

158 | (7) EMERGENCY MEDICAL TREATMENT.—Notwithstanding any other  
 159 | provision of this section, when the express and informed consent  
 160 | of an inmate placed in a mental health treatment facility in  
 161 | accordance with s. 945.44 cannot be obtained or the inmate is  
 162 | incompetent to consent to treatment, the warden of a mental  
 163 | health treatment facility, or his or her designated  
 164 | representative, under the direction of the inmate's attending  
 165 | physician, may authorize nonpsychiatric, emergency surgical  
 166 | treatment or other routine medical treatment if such treatment  
 167 | is deemed lifesaving or there is a situation threatening serious  
 168 | bodily harm to the inmate.

169 | Section 2. Section 945.42, Florida Statutes, is amended to  
 170 | read:

171 | 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
 172 | 945.40-945.49, the following terms shall have the meanings  
 173 | ascribed to them, unless the context shall clearly indicate  
 174 | otherwise:

175 | (1) "Chief" means the Chief of Mental Health Services of

176 the Department of Corrections or his or her designee.

177 (2)~~(1)~~ "Court" means the circuit court.

178 (3)~~(2)~~ "Crisis stabilization care" means an inpatient a  
179 level of care that is less restrictive and ~~intensive~~ intense  
180 than care provided in a mental health treatment facility, that  
181 includes a broad range of evaluation and treatment ~~and~~ services  
182 provided within a ~~secure and~~ highly structured ~~residential~~  
183 setting ~~or locked residential setting~~, and that is intended for  
184 inmates who are experiencing acute ~~psychological~~ emotional  
185 distress and who cannot be adequately evaluated and treated in a  
186 transitional care unit or infirmary isolation management room.  
187 Such treatment ~~and services are~~ is also more intense than  
188 treatment ~~and services~~ provided in a transitional care unit and  
189 are ~~is~~ devoted principally toward rapid stabilization of acute  
190 symptoms and conditions.

191 (4)~~(3)~~ "Department" means the Department of Corrections.

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

198 (6) "Gravely disabled" means a condition in which an  
199 inmate, as a result of a diagnosed mental illness, is:

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



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

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

207 (7)(6) "In need of care and treatment" means that an  
 208 inmate has a mental illness for which inpatient services in a  
 209 mental health treatment facility are necessary and ~~that, but for~~  
 210 ~~being isolated in a more restrictive and secure housing~~  
 211 ~~environment,~~ because of the mental illness:

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

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

219 2. There is a substantial likelihood that in the near  
 220 future, without treatment, the inmate will inflict serious  
 221 bodily harm on himself or herself or another person, as  
 222 evidenced by recent behavior causing, attempting, or threatening  
 223 such harm.~~†~~

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

226 to treatment.

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

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

233 (8) "Incompetent to consent to treatment" means a state in  
 234 which an inmate's judgment is so affected by mental illness that  
 235 he or she lacks the capacity to make a well-reasoned, willful,  
 236 and knowing decision concerning his or her medical or mental  
 237 health treatment and services. The term is distinguished from  
 238 the term "incompetent to proceed," as defined in s. 916.106, and  
 239 only refers to an inmate's inability to provide express and  
 240 informed consent for medical or mental health treatment and  
 241 services.

242 ~~(4) "Director" means the Director for Mental Health~~  
 243 ~~Services of the Department of Corrections or his or her~~  
 244 ~~designee.~~

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

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

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

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

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

265 ~~(9)(7) "Inmate" means any person committed to the custody~~  
 266 ~~of the department of Corrections.~~

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

272 (11) "Likelihood of serious harm" means:

273 (a) A substantial risk that the inmate will inflict  
 274 serious physical harm upon his or her own person, as evidenced  
 275 by threats or attempts to commit suicide or the actual

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276 infliction of serious physical harm on self;

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

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

285 (12)-(8) "Mental health treatment facility" means any  
286 extended treatment or hospitalization-level unit within the  
287 corrections system which the Assistant Secretary for Health  
288 Services of the department specifically designates by rule to  
289 provide acute mental health ~~psychiatric~~ care and which may  
290 include involuntary treatment and therapeutic intervention in  
291 contrast to less intensive levels of care such as outpatient  
292 mental health care, transitional mental health care, or crisis  
293 stabilization care. As used in this chapter, a mental health  
294 treatment facility is not a forensic facility as defined in s.  
295 916.106.

296 (13)-(9) "Mental illness" or "mentally ill" means an  
297 impairment of the mental or emotional processes that exercise  
298 conscious control of one's actions or of the ability to perceive  
299 or understand reality, which impairment substantially interferes  
300 with the person's ability to meet the ordinary demands of

301 living. However, for the purposes of transferring an inmate to a  
302 mental health treatment facility, the term does not include a  
303 developmental disability as defined in s. 393.063, simple  
304 intoxication, or conditions manifested only by antisocial  
305 behavior or substance abuse addiction. However, an individual  
306 who is developmentally disabled may also have a mental illness.

307 (14)~~(10)~~ "Psychiatrist" means a medical practitioner  
308 licensed pursuant to chapter 458 or chapter 459 ~~who has~~  
309 ~~primarily diagnosed and treated nervous and mental disorders~~ for  
310 a period of not less than 3 years inclusive of psychiatric  
311 residency.

312 (15)~~(11)~~ "Psychological professional" means a behavioral  
313 practitioner who has an approved doctoral degree in psychology  
314 as defined in s. 490.003(3) (b) ~~s. 490.003(3)~~ and is employed by  
315 the department or who is licensed as a psychologist pursuant to  
316 chapter 490.

317 (16)~~(12)~~ "Secretary" means the Secretary of Corrections.

318 (17)~~(13)~~ "Transitional mental health care" means a level  
319 of care that is more intensive than outpatient care, but less  
320 intensive than crisis stabilization care, and is characterized  
321 by the provision of traditional mental health treatment and  
322 services ~~treatments~~ such as group and individual therapy,  
323 activity therapy, recreational therapy, and psychotropic  
324 medications in the context of a secure, structured residential  
325 setting. Transitional mental health care is indicated for an

326 inmate ~~a person~~ with chronic or residual symptomatology who does  
 327 not require crisis stabilization care or acute mental health  
 328 ~~psychiatric~~ care, but whose impairment in functioning  
 329 nevertheless renders him or her incapable of adjusting  
 330 satisfactorily within the general inmate population.

331 (18) "Treatment" means psychotropic medications prescribed  
 332 by a medical practitioner licensed pursuant to chapter 458 or  
 333 chapter 459, including those laboratory tests and related  
 334 medical procedures that are essential for the safe and effective  
 335 administration of a psychotropic medication and psychological  
 336 interventions and services such as group and individual  
 337 psychotherapy, activity therapy, recreational therapy, and music  
 338 therapy. The term does not include forensic services for inmate  
 339 defendants who are incompetent to proceed as defined in s.  
 340 916.106.

341 (19)~~(14)~~ "Warden" means the warden of a state corrections  
 342 facility or his or her designee.

343 Section 3. Section 945.43, Florida Statutes, is amended to  
 344 read:

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

347 945.43 Involuntary examination.—

348 (1) If there is reason to believe that an inmate has a  
 349 mental illness and the inmate is in need of care and treatment,  
 350 the inmate's treating clinician may refer the inmate to a mental

351 health treatment facility for an involuntary examination. Upon  
352 referral, the warden of the facility where the inmate is housed  
353 shall transfer the inmate to a mental health treatment facility.

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

358 (3) If, after the examination, the inmate is determined to  
359 be in need of care and treatment, the psychiatrist shall propose  
360 a recommended course of treatment that is essential to the care  
361 of the inmate and the warden shall initiate proceedings for  
362 placement of the inmate in the mental health treatment facility  
363 and for involuntary treatment of the inmate as specified in s.  
364 945.44. If the inmate is not in need of care and treatment, he  
365 or she shall be transferred out of the mental health treatment  
366 facility and provided with appropriate mental health services.

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

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

376 provided in s. 945.48.

377 Section 4. Section 945.44, Florida Statutes, is amended to  
378 read:

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

381 945.44 Placement and treatment of an inmate in a mental  
382 health treatment facility.—

383 (1) CRITERIA.—An inmate may be placed in a mental health  
384 treatment facility if he or she is mentally ill and is in need  
385 of care and treatment. Involuntary mental health treatment that  
386 is deemed to be essential for the appropriate care of the inmate  
387 and the safety of the inmate or others may be provided at the  
388 mental health treatment facility if the inmate is either gravely  
389 disabled or presents a likelihood of serious harm.

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

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



401       (b) The inmate shall be provided with a copy of the  
402 petition along with the proposed treatment, the basis for the  
403 proposed treatment, the names of the examining experts, and the  
404 date, time, and location of the hearing. After considering the  
405 public safety and security concerns presented by transporting  
406 the inmate or in conducting onsite hearings, the court may order  
407 that the hearing be conducted by electronic means or in person  
408 at the facility or at another location designated by the court.  
409 If the hearing is ordered by the court to be conducted at a  
410 location other than the facility, the department is authorized  
411 to transport the inmate to the location of the hearing.

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

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

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

431       (f) If the court finds that the inmate is mentally ill and  
432 in need of care and treatment, the court shall order that he or  
433 she be placed in the mental health treatment facility for a  
434 period not to exceed 6 months.

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

- 439       1. The inmate is mentally ill.
- 440       2. The treatment is essential to the care of the inmate.
- 441       3. The treatment is not experimental and does not present  
442 an unreasonable risk of serious, hazardous, or irreversible side  
443 effects.
- 444       4. The inmate is gravely disabled or poses a likelihood of  
445 serious harm.
- 446       5. The inmate is incompetent to consent to treatment.

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

- 448       1. The inmate's expressed preference regarding treatment,  
449 if the inmate is able to express a preference.
- 450       2. The probability of adverse side effects.

451 3. The prognosis for the inmate without treatment.

452 4. The prognosis for the inmate with treatment.

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

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

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

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

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

484 Section 5. Section 945.45, Florida Statutes, is repealed.

485 Section 6. Subsection (3) of section 945.46, Florida  
486 Statutes, is renumbered as subsection (5) and amended, and a new  
487 subsection (3) and subsection (4) are added to that section to  
488 read:

489 945.46 Initiation of involuntary placement proceedings  
490 with respect to a mentally ill inmate scheduled for release.—

491 (3) The warden shall file petitions for involuntary  
492 inpatient placement for inmates scheduled to be released in the  
493 court in the county where the inmate is located. Upon filing,  
494 the clerk of the court shall provide copies to the Department of  
495 Children and Families, the inmate, and the state attorney and  
496 public defender of the judicial circuit in which the inmate is  
497 located. A fee may not be charged for the filing of a petition  
498 under chapter 394. Within 1 court working day after the filing  
499 of a petition for involuntary inpatient placement, the court  
500 shall appoint the public defender to represent the inmate who is

501 the subject of the petition, unless the inmate is otherwise  
502 represented by counsel. The clerk of the court shall immediately  
503 notify the public defender of such appointment. Any attorney  
504 representing the inmate shall have access to the inmate,  
505 witnesses, and records relevant to the presentation of the  
506 patient's case and shall represent the interests of the inmate,  
507 regardless of the source of payment to the attorney. The state  
508 attorney for the circuit in which the inmate is located shall  
509 represent the state, rather than the petitioning warden, as the  
510 real party in interest in the proceeding. The remainder of the  
511 proceedings shall be governed by chapter 394.

512 (4) After considering the public safety and security  
513 concerns presented by transporting a mentally ill inmate to  
514 court, the court may order that the hearing be conducted by  
515 electronic means, at the facility in person, or at another  
516 location designated by the court. If the hearing is ordered by  
517 the court to be conducted at a location other than the facility,  
518 the department is authorized to transport the inmate to the  
519 location of the hearing.

520 (5)~~(3)~~ The department may transport an individual who is  
521 being released from its custody to a receiving or mental health  
522 treatment facility for involuntary examination or placement.  
523 Such transport shall be made to a facility that is specified by  
524 the Department of Children and Families as able to meet the  
525 specific needs of the individual. If the Department of Children

526 and Families does not specify a facility, transport shall ~~may~~ be  
 527 made to the nearest receiving facility.

528 Section 7. Section 945.47, Florida Statutes, is amended to  
 529 read:

530 945.47 Discharge of inmate from mental health treatment.-

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

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

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

544 (2) At any time that an inmate who has received mental  
 545 health treatment while in the custody of the department becomes  
 546 eligible for release under supervision or upon end of sentence,  
 547 a record of the inmate's mental health treatment may be provided  
 548 to the Florida Commission on Offender Review and ~~to~~ the  
 549 Department of Children and Families to arrange postrelease  
 550 aftercare placement and to prospective recipient inpatient

551 health care or residential facilities upon request. The record  
552 shall include, at a minimum, a summary of the inmate's  
553 diagnosis, length of stay in treatment, clinical history,  
554 prognosis, prescribed medication, treatment plan, and  
555 recommendations for aftercare services.

556 Section 8. Section 945.48, Florida Statutes, is amended to  
557 read:

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

560 945.48 Emergency treatment orders and use of force.—

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

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

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

574 (2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may  
575 be administered only when the medication constitutes an

576 appropriate treatment for a mental illness and its symptoms and  
577 alternative treatments are not available or indicated, or would  
578 not be effective. If after the 72-hour period the inmate has not  
579 given express and informed consent to the medication initially  
580 refused, the inmate's treating physician shall refer the inmate  
581 to a mental health treatment facility for an involuntary  
582 examination in accordance with the procedures described s.  
583 945.43. Upon such referral, the warden shall, within 48 hours,  
584 excluding weekends and legal holidays, transfer the inmate to a  
585 mental health treatment facility. Upon transfer of the inmate  
586 for an involuntary examination, the emergency treatment order  
587 may be continued upon the written order of a physician as long  
588 as the physician has determined that the emergency continues to  
589 present a danger to the safety of the inmate or others and the  
590 criteria described in this subsection are satisfied. If  
591 psychotropic medication is still recommended after the  
592 emergency, it may only be administered after following the  
593 procedures outlined in s. 945.44.

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



601 shall be followed when using force to effectuate such treatment,  
602 apply such restraint, or effectuate such hygiene.

603 Section 9. Section 945.485, Florida Statutes, is created  
604 to read:

605 945.485 Management and treatment for self-injurious  
606 behaviors.-

607 (1) The Legislature finds that nonsuicidal self-injurious  
608 behaviors in correctional institutions, or acts intended to  
609 cause bodily harm but not death, have increased in the  
610 correctional environment. Self-injurious behavior may include  
611 nonsuicidal self-injury or self-mutilation, such as cutting,  
612 reopening wounds, and ingesting or inserting foreign objects or  
613 dangerous instruments into the body. These behaviors pose a  
614 significant threat to inmates, staff, and, in many cases, the  
615 safe and secure operation of the correctional institution. In  
616 addition, self-injurious behaviors, coupled with repeated  
617 refusals to provide express and informed consent for medical  
618 treatment and care, are a significant challenge for correctional  
619 medical and mental health professionals, resulting in higher  
620 costs for medical services, and may result in inadvertent  
621 mortality in the incarcerated population.

622 (2) In accordance with s. 945.6042, the Legislature finds  
623 that an inmate retains the fundamental right of self-  
624 determination regarding decisions pertaining to his or her own  
625 health, including the right to choose or refuse medical

626 treatment or life-saving medical procedures. However, the  
627 inmate's right to privacy and decisionmaking regarding medical  
628 treatment may be outweighed by compelling state interests.

629 (3) When an inmate is engaging in active or ongoing self-  
630 injurious behavior and has refused to provide express and  
631 informed consent for treatment related to the self-injurious  
632 behavior, the warden of the facility where the inmate is housed  
633 shall consult with the inmate's treating physician regarding the  
634 inmate's medical and mental health status, current medical and  
635 mental health treatment needs, and competency to provide express  
636 and informed consent for treatment. The warden shall also  
637 determine whether the inmate's self-injurious behavior presents  
638 a danger to the safety of department staff or other inmates or  
639 the security, internal order, or discipline of the institution.

640 (a) If the inmate's treating physician determines that the  
641 inmate has a mental illness and is incompetent to consent to  
642 treatment, the physician shall proceed in accordance with s.  
643 945.6042 for any necessary surgical or medical services. If the  
644 inmate is in need of care and treatment as defined in s. 945.42,  
645 the inmate shall be referred to a mental health treatment  
646 facility for an involuntary examination in accordance with s.  
647 945.44.

648 (b) If the inmate is competent, refusing necessary  
649 surgical or medical treatment, and engaging in active or ongoing  
650 self-injurious behavior that presents a threat to the safety of

651 department staff or other inmates or the security, internal  
652 order, or discipline of the institution, the warden shall follow  
653 the procedure set forth in subsection (4).

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

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

676 inmate to the location of the hearing.

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

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

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

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

- 698 1. Preservation of the life of the inmate.  
699 2. Prevention of suicide.  
700 3. Protection of innocent third parties.

701 4. Maintenance of the ethical integrity of the medical  
 702 profession.

703 5. Preservation of the security, internal order, or  
 704 discipline of the institution.

705 6. Rehabilitation of the inmate.

706 7. Any other compelling state interest.

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

717 (5) This section does not repeal by implication any  
 718 provision of s. 766.103, the Florida Medical Consent Law, or s.  
 719 768.13, the Good Samaritan Act. For all purposes, the Florida  
 720 Medical Consent Law and the Good Samaritan Act shall be  
 721 considered an alternative to this section.

722 Section 10. Subsection (2) of section 945.49, Florida  
 723 Statutes, is amended to read:

724 945.49 Operation and administration.—

725 (2) RULES.—~~The department, in cooperation with the Mental~~

726 ~~Health Program Office of the Department of Children and~~  
 727 ~~Families,~~ shall adopt rules necessary for administration of ss.  
 728 945.40-945.49 in accordance with chapter 120.

729 Section 11. Section 945.6042, Florida Statutes, is created  
 730 to read:

731 945.6042 Inmate health care advance directives.-

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

735 (a) "Health care facility" has the same meaning as in s.  
 736 765.101 and includes any correctional institution or facility  
 737 where health care is provided.

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

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

749 (d) "Inmate" means any person committed to the custody of  
 750 the department.

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

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

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

769 (2) LEGISLATIVE FINDINGS AND INTENT-

770 (a) In accordance with chapter 765, the Legislature finds  
771 that an inmate retains the fundamental right of self-  
772 determination regarding decisions pertaining to his or her own  
773 health, including the right to choose or refuse medical  
774 treatment. In accordance with chapter 765, this right is subject  
775 to certain institutional interests including the protection of

776 human life, the preservation of ethical standards in the medical  
777 profession, and, for inmates committed to the custody of the  
778 department, the security and good order of the institutional  
779 setting.

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

793 (c) In order to ensure that the rights and intentions of  
794 an inmate are respected when the inmate is not able to  
795 participate actively in decisions concerning himself or herself,  
796 and to encourage communication among such inmate, his or her  
797 family, and his or her treating physicians, the Legislature  
798 declares that the laws of this state recognize the right of a  
799 competent incarcerated adult to make an advance directive  
800 instructing his or her physicians to provide, withhold, or



801 withdraw life-prolonging procedures or to designate another  
802 person to make the health care decision for him or her in the  
803 event that such incarcerated person should become incapacitated  
804 and unable to personally direct his or her health care. It is  
805 further the intent of the Legislature that the department  
806 provide the opportunity for inmates to make advance directives  
807 as specified in this section.

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

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

824 (3) CAPACITY OF INMATE; PROCEDURE.-

825 (a) An inmate is presumed to be capable of making health

826 care decisions for himself or herself unless he or she is  
827 determined to be incapacitated. When an inmate has  
828 decisionmaking capacity, the inmate's wishes are controlling.  
829 Each physician or health care provider must clearly communicate  
830 the treatment plan and any change to the treatment plan before  
831 implementation of the plan or any change to the plan. Incapacity  
832 may not be inferred from an inmate's involuntary hospitalization  
833 for mental illness or from his or her intellectual disability.

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

847 (c) If the inmate is found to be incapacitated and has  
848 designated a health care surrogate in accordance with chapter  
849 765, the institution's or facility's health care staff shall  
850 notify the surrogate and proceed as specified in chapter 765. If

851 the incapacitated inmate has not designated a health care  
852 surrogate, the health care facility shall appoint a proxy to  
853 make health care decisions for the inmate as specified in this  
854 section.

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

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

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

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

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

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

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

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

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

883        (5) PROXY.-

884        (a) If an incapacitated inmate has not executed an advance  
885 directive, or designated a health care surrogate in accordance  
886 with the procedures specified in chapter 765 or the designated  
887 health care surrogate is no longer available to make health care  
888 decisions, health care decisions may be made for the inmate by  
889 any of the individuals specified in the priority order provided  
890 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts  
891 to locate a proxy from the classes specified in s.  
892 765.401(1)(a)-(g) shall be recorded in the inmate's medical  
893 file.

894        (b) If there are no individuals as specified in s.  
895 765.401(1)(a)-(g) available, willing, or competent to act on  
896 behalf of the inmate, and the inmate is housed in a correctional  
897 institution or facility where health care is provided in a  
898 nonhospital setting, the warden of the institution where the  
899 inmate is housed, or the warden's designee, shall consult with  
900 the Assistant Secretary for Health Services or his or her

901 designee who shall appoint a department ombudsman to serve as  
902 the proxy. This appointment terminates when the inmate regains  
903 capacity or is no longer incarcerated in the custody of the  
904 department. In accordance with chapter 765 and as provided in  
905 this section, decisions to withhold or withdraw life-prolonging  
906 procedures will be reviewed by the department's proxy review  
907 team for compliance with chapter 765 and the requirements of  
908 this section.

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

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

923 (e) Before exercising the incapacitated inmate's rights to  
924 select or decline health care, the proxy must comply with ss.  
925 765.205 and 765.305, except that any proxy's decision to

926 withhold or withdraw life-prolonging procedures must be  
927 supported by clear and convincing evidence that the decision  
928 would have been the one the inmate would have made had he or she  
929 been competent or, if there is no indication of what decision  
930 the inmate would have made, that the decision is in the inmate's  
931 best interest.

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

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

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

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951        Section 12.   This act shall take effect July 1, 2024.