The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL:	SB 1604
INTRODUCER:	Senator Martin
SUBJECT:	Corrections
DATE:	March 24, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	**Pre-meeting**
2.			ACJ	
3.			FP	

I. Summary:

SB 1604 amends multiple sections of law, including prepayment court costs and the statute of limitations on prisoners' lawsuits, execution methods for the death penalty, location tracking for inmates and other persons, the parole qualifications committee, contractor-operated correctional facilities, minority representation requirements, and the Corrections Mental Health Act. Specifically, the bill:

- Amends s. 57.085, F.S., to specify that the deferral of prepayment of court costs and fees does not apply to challenges to prison disciplinary reports.
- Amends s. 95.11, F.S., to provide a statute of limitations of one year to all petitions, extraordinary writs, tort actions, or other actions which concern any condition of confinement of a prisoner.
- Creates s. 760.701, F.S., to restrict a prisoner from pursuing a civil action until all administrative remedies are fully exhausted and aligns with the Prison Litigation Reform Act to restrict a prisoner, or person on behalf of a prisoner, from filing a lawsuit relating to the conditions of confinement for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act.
- Amends s. 775.087, F.S., to allow the court to impose consecutive sentences for any person who is convicted for committing an offense listed under s. 775.087(2)(a)1.F.S., in conjunction with any other felony offense.
- Amends ss. 922.10 and 922.105, F.S., to allow for the death sentence to be executed by a method not deemed unconstitutional.
- Amends s. 934.425, F.S., to provide an exception to the criminal offense for the installation or use of a tracking device and allows for a person working for or at a confinement center, to install, place, or use a tracking device or tracking application on a person within their care, custody, or control as part of his or her employment.
- Amends and substantially rewords the Corrections Mental Health Act under ss. 945.41 – 945.49, F.S., to provide updated, clarifying, or technical language, as well as provide

substantial changes to the procedure for placement and treatment of inmates. Additionally, s. 945.485 to provide legislative intent and procedures for inmates engaging in self-injurious behavior.

- Creates s. 945.6402, F.S., to require the DOC to offer inmates the opportunity to execute an advance directive. The bill provides procedure relating to the capacity of an inmate, creates a process for a DOC ombudsman to serve as a proxy for an inmate that has not executed an advance directive, authorizes the use of force and provides immunity from liability, and defines terms.
- Amends s. 947.02, F.S., to eliminate the Parole Qualification Committee. The members of the FCOR are to be directly appointed by the Governor and Cabinet. The bill also removes the requirement for the membership of the FCOR commission to include representation from minority persons.
- Amends s. 957.04, F.S., to allow the DOC to exclude certain services from a contract for private correctional services and retain the responsibility for the delivery of such services whenever the DOC finds it to be in the best interest of the state. Additionally, the requirement for each contract to include substantial minority participation is removed.
- Amends 957.09, F.S., to remove language relating to the participation of minority business enterprises

The bill may have an indeterminate fiscal impact on the DOC. *See Section V. Fiscal Impact Statement.*

The bill takes effect July 1, 2025.

II. Present Situation:

The DOC is Florida's largest agency, and the third largest state prison system in the country. The DOC employs nearly 24,000 people, incarcerates over 88,000 inmates, and supervised more than 145,000 offenders in the community.[1]

Prison Litigation Reform Act

The Prison Litigation Reform Act (PLRA) placed several restrictions on a prisoner's ability to file civil rights lawsuits based on the conditions of confinement.[2] The federal law sought to reduce frivolous litigation, give correction officials the ability to remedy problems before litigation, and lighten the caseload for courts handling prisoner litigation.[3]

The bill creates s. 760.701, F.S., to align with the federal standard and procedure relating to the filing of lawsuits by prisoners pursuant to 42 U.S.C.A. § 1997e. Under section 1997e, a prisoner

[1] Florida Department of Corrections, available at: https://www.fdc.myflorida.com/ (last visited March 22, 2025).
[2] A "condition of confinement" is any issue related to a prisoner's confinement. As the U.S. Supreme Court stated, "Indeed, the medical care a prisoner receives is just as much a 'condition' of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates." *Wilson v. Seiter,* 501 U.S. 294, 303 (1991); See also *Porter v. Nussle,* 534 U.S. 516,532 (2002) (finding that the term "prison conditions" "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes and whether they allege excessive force or some other wrong.")
[3] FindLaw, *Prison Litigation Reform Act*, Samuel Strom, J.D. (2023), available at: https://www.findlaw.com/criminal/criminal-rights/prison-litigation-reform-act.html (last visited March 19, 2025).

is required to exhaust all available administrative remedies before filing suit with respect to prison conditions under 42 U.S.C.A. § 1983.[4] The court is directed to dismiss any action brought with respect to prison conditions, 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.[5] The PLRA also restricts a prisoner from filing federal civil action for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act[6] (as defined in section 2246 of Title 18).[7]

In the case of *Siggers-El v. Barlow*, the plaintiff, a prisoner, requested for the defendant, a prison official, to authorize disbursements from his prison account to pay for a lawyer to review his appellate brief. The defendant refused to authorize the disbursement of funds until after a supervisor ordered the defendant to do so. After a series of conflicts over this matter, the defendant filled out a screen designating the prisoner for transfer to another facility. The defendant was aware that the transfer would prevent the Plaintiff from seeing his attorney, paying his attorney, and from seeing his emotionally-disabled daughter. The jury awarded $15,000 in mental or emotional damages, as well as $4,000 in economic damages and $200,000 in punitive damages.

When addressing whether mental or emotional damages were not recoverable because the PLRA prohibits the recovery of such damages in the absence of a physical injury, the Court found that the relevant portion of the PLRA, 42 U.S.C.A. § 1997e, is unconstitutional. "Application of § 1997e(e) to bar mental or emotional damages would effectively immunize officials from liability for severe constitutional violations, so long as no physical injury is established. Such immunity would be at odds with the fact that the statute allows plaintiffs to recover unlimited mental or emotional damages, so long as they prove more than *de minimis* physical injury. The Court finds the following hypothetical, set forth in Plaintiff's brief, to be persuasive:

> '[I]magine a sadistic prison guard who tortures inmates by carrying out fake executions-holding an unloaded gun to a prisoner's head and pulling the trigger, or staging a mock execution in a nearby cell, with shots and screams, and a body bag being taken out (within earshot and sight of the target prisoner). The emotional harm could be catastrophic but would be non-compensable. On the other hand, if a guard intentionally

[4] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. 42 U.S.C.A. § 1983.

[5] 42 U.S.C.A. § 1997e(c)(1).

[6] The term "sexual act" means: contact between the penis and the vulva or the penis and the anus, and purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. 18 U.S.C.A. § 2246.

[7] 42 U.S.C.A. § 1997e(e).

> pushed a prisoner without cause, and broke his finger, all emotional damages proximately caused by the incident would be permitted.'"[8]

However, some courts, such as in the case of *Pagonis v. Raines*, upheld the PLRA and dismissed the plaintiff's claim for compensatory damages, having shown no prior physical injury.[9]

Limitations of Actions

Actions other than for recovery of real property are outlined within s. 95.11, F.S. Limitations of 20 years, five years, four years, two years, and one year are provided for a number of actions. With the exception for specified actions,[10] a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed on or behalf of an inmate is subject to a one year limitation.[11] Further, with the exception for specified actions, an action brought by or on behalf of an inmate relating to the conditions of confinement are also limited to one year.[12]

Court Costs

When a prisoner is intervening in or initiating a judicial proceeding seeks to defer the prepayment of court costs and fees because of indigence, the prisoner must file an affidavit of indigence with the appropriate clerk of the court. The affidavit must contain specific information as to the prisoner's identity and the estate of such prisoner.[13]

When the clerk has found the prisoner to be indigent, the court must order the prisoner to make monthly payments of no less than 20 percent of the balance of his or her trust account as payment of court costs and fees. When a court orders such payment, the DOC or local detention facility places a lien on the prisoner's trust account for the full amount of the court costs and fees, and withdraw money maintained in that trust account and forward the money, when the balance exceeds $10, to the appropriate clerk of the court until the prisoner's court costs and fees are paid in full.[14]

Sentencing

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 specific crimes[15] and during the commission of the offense such person:

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[8] *Siggers-El v. Barlow*, 433 F. Supp. 2d 811 (E.D. Mich. 2006)
[9] *Pagonis v. Raines*, No. 4:17-CV-01-DC-DF, 2018 WL 9240919 (W.D. Tex. Aug. 10, 2018), report and recommendation adopted, No. PE:17-CV-00001-DC, 2018 WL 9240916 (W.D. Tex. Sept. 10, 2018)
[10] Any court action challenging prisoner disciplinary proceedings conducted by the DOC pursuant to s. 944.28(2), F.S., must be commenced within 30 days after the final disposition of the prisoner disciplinary proceedings through the administrative grievance process. Any action challenging prisoner disciplinary proceedings must be barred by the court unless it is commenced within the 30 day time period. Section 95.11(9), F.S.
[11] Section 95.11(6)(f), F.S.
[12] Section 95.11(6)(g), F.S.
[13] Section 57.085(2), F.S.
[14] Section 57.085(5), F.S.
[15] Murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled person; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in listed substances; possession of a firearm by a felon; or human trafficking. Section 775.087(2)(a)1., F.S.

- Possessed a "firearm" or "destructive device," must be sentenced to a minimum 10 year term of imprisonment.[16]
- Discharged the firearm, must be sentenced to a minimum 20 year term of imprisonment.[17]
- Discharged the firearm which resulted in death or great bodily harm, must be sentenced to a minimum 25 year term of imprisonment, up to life.[18]

If the minimum mandatory terms of imprisonment imposed exceed the maximum sentenced authorized by s. 775.082, F.S., s. 775.084, F.S., or the Criminal Punishment Code, then the sentence imposed by the court must include the mandatory minimum term of imprisonment as required by s. 775.087, F.S.[19]

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 machine gun, be punished to the fullest extent of the law, and the minimum terms of imprisonment be imposed for each qualifying felony count for which the person is convicted. The court must impose any term of imprisonment provided consecutively to any other term of imprisonment imposed for any other felony offense.[20]

In *Williams v State*, the defendant was convicted following a jury trial in the circuit court, of four counts of aggravated assault with a firearm, for which he received four consecutive mandatory minimum prison terms of 20 years each. The defendant appealed and brought forth the question of whether a trial court is required under s. 775.087(2)(d), F.S., to impose consecutive minimum terms of imprisonment for multiple offense when the offenses arise from a single criminal episode. The Supreme Court held, regarding the language in s. 775.057(2)(d), F.S., that "the court shall impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense" does not require the court to sentence a defendant to consecutive sentences when the sentences arise from the same criminal episode.[21]

Execution of the Death Penalty

On January 25, 2024, the state of Alabama executed a death row inmate using nitrogen gas. It marked the first time that a new execution method has been used in the United States since lethal injection, now the most commonly used method, was introduced in 1982. The inmate was not executed by lethal injection because authorities couldn't connect an IV line.[22] On March 7, 2025,

[16] Section 775.087(2)(a)1., F.S., except that a person who is convicted for possession of a firearm by a felon or burglary of a conveyance must 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.
[17] Section 775.087(2)(a)2., F.S.
[18] Section 775.087(2)(a)3., F.S.
[19] Section 775.087(2)(c), F.S.
[20] Section 775.087(2)(d), F.S.
[21] *Williams v. State*, 186 So. 3d 989 (Fla. 2016)
[22] Politico, *Alabama Execute a Man With Nitrogen Gas*, Associated Press (January 25, 2024), available at: https://www.politico.com/news/2024/01/25/supreme-court-alabama-execution-00138007 (last visited March 19, 2025).

South Carolina executed an inmate by use of firing squad, the first inmate in 15 years to die by that method.[23]

The company, Absolute Standards, which was identified as the source of lethal injection drugs used in 13 federal executions in 2020 and 2021, has said it will no longer produce the drug used in executions – pentobarbital. For more than a decade, departments of corrections across the United States have had difficulty acquiring some of the drugs traditionally used in lethal injection executions. Many drug manufacturers have explicitly banned the use of their products in executions and others have stopped producing these drugs completely.[24] Several states, such as Idaho, Mississippi, Oklahoma, Utah, and South Carolina, have enacted legislation to allow for the use of firing squad as a method of execution.[25]

Florida Law

Currently under Florida law, a death sentence must be executed by electrocution or lethal injection. Pursuant to s. 922.105, F.S., a death sentence must be executed by lethal injection, unless the person sentenced to death affirmatively elects to be executed by electrocution. If either method is deemed unconstitutional, all persons sentenced to death will be executed by any constitutional method of execution.[26] No sentence of death shall be reduced as a result of a determination that a method of execution is declared unconstitutional under the State Constitution or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence must remain in force until the sentence can be lawfully executed by any valid method of execution.[27]

A change in the method of execution does not increase the punishment or modify the penalty of death for capital murder. Any legislative change to the method of execution for the crime of capital murder does not violate s. 10, Art. I or s. 9, Art. X of the State Constitution.[28]

Tracking Devices

Tracking devices[29] and tracking applications[30] can be used to follow the location or movement of another person, potentially without that person's knowledge or consent. Some applications have legitimate uses but may be accessed by third parties without the user's consent. Other

[23] AP News, *South Carolina Man Executed by Firing Squad*, Jeffrey Collins (March 7, 2025) available at: https://apnews.com/article/firing-squad-execution-south-carolina-sigmond-c998f11ecd3fcbf117d55b682ce3604a (last visited March 22, 2025).
[24] Death Penalty Information Center, *Federal Execution-Drug Supplier Says It Will No Longer Produce Pentobarbital for Executions*, (Updated March 14, 2025), available at: https://deathpenaltyinfo.org/federal-execution-drug-supplier-says-it-will-no-longer-produce-pentobarbital-for-executions (last visited March 19, 2025).
[25] Death Penalty Information Center, *Idaho Governor Signs Legislation Authorizing Firing Squad as State's Primary Execution Method*, Hayley Bedard (March 17, 2025), available at: https://deathpenaltyinfo.org/idaho-governor-signs-legislation-authorizing-firing-squad-as-states-primary-execution-method (last visited March 19, 2025).
[26] Section 922.105(3), F.S.
[27] Section 922.105(8), F.S.
[28] Section 922.105(5), F.S.
[29] "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. Section 934.425(1)(c), F.S.
[30] "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. Section 934.425(1)(b), F.S.

applications are developed and marketed as surveillance applications, commonly targeting potential customers interested in using the technology to track the movements and communication of another without consent.[31]

Unlawful Installation or Use of a Tracking Device or Application

Unless excepted, s. 934.425, F.S., it is a third degree felony[32] to knowingly:

- Install or place a tracking device or tracking application on another person's property without that person's consent; or
- Use a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.[33]

A person's consent to be tracked is presumed to be revoked if:

- The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other;[34] or
- The consenting person or the person to whom consent was given files an injunction for protection against the other person.[35]

The prohibition against installing a tracking device or tracking application does not apply to specified persons including a law enforcement officer, or any local, state, federal, or military law enforcement agency, that lawfully installs, places, or uses a tracking device or tracking application on another person's property as part of a criminal investigation;[36]

The Corrections Mental Health Act

Under the Corrections Mental Health Act, ss. 945.40-945.49, F.S., it is the intent of the Legislature for mentally ill inmates in the custody of the DOC to receive an evaluation and appropriate treatment for their mental illness through a continuum of services. The DOC must provide mental health services to inmates committed to the DOC and may contract with entities, persons, or agencies qualified to provide such services.[37] Additionally, the DOC is required to work in cooperation with the Mental Health Program Office of the DCF to adopt rules necessary for administration of ss. 945.40-945.49, F.S.[38] Mental health treatment facilities are required to be secure, adequately equipped and staffed, and provide services in the least restrictive manner consistent with optimum improvement of the inmate's condition.[39]

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[31] New York Times, *I Used Apple AirTags, Tiles and a GPS Tracker to Watch My Husband's Every Move*, Kashmir Hill, February 11, 2022, available at https://www.nytimes.com/2022/02/11/technology/airtags-gps-surveillance.html (last visited on March 20, 2025).
[32] A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding $5,000. Section 775.082 and 775.083, F.S.
[33] Section 934.425(2), F.S.
[34] Section 934.425(3)(a), F.S.
[35] Section 934.425(3)(b), F.S., references the following injunctions for protection: s. 741.30, F.S., relating to domestic violence; s. 741.315, F.S., relating to foreign protection orders; s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence; s. 784.048, F.S., relating to stalking.
[36] Section 934.425(4)(a), F.S.
[37] Section 945.41(1), F.S.
[38] Section 945.49(2), F.S.
[39] Section 945.41(2), F.S.

The Corrections Mental Health Act provides key terminology necessary in determining criteria is met for crisis stabilization care[40] such as:

- "Mentally ill" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or 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, F.S., 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.[41]
- "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: 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 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; the inmate is unable to determine for himself or herself whether placement is necessary; and 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.[42]
- "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: 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 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; The inmate is unable to determine for himself or herself whether placement is necessary; and 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.[43]
- "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 treatments such as group and individual therapy, activity therapy, recreational therapy, and psychotropic medications in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomatology who does not require crisis stabilization care or acute psychiatric care, but

[40] "Crisis Stabilization Care" means a level of care that is less restrictive and intense than care provided in a mental health treatment facility, that includes a broad range of evaluation and treatment services provided within a highly structured setting or locked residential setting, and that is intended for inmates who are experiencing acute emotional distress and who cannot be adequately evaluated and treated in a transitional care unit and is devoted principally toward rapid stabilization of acute symptoms and conditions. Section 945.42(2), F.S.
[41] Section 945.42(9), F.S.
[42] Section 945.42(5), F.S.
[43] Section 945.42(6), F.S.

whose impairment in functioning nevertheless renders him or her incapable of adjusting satisfactorily within the general inmate population .[44]

Correctional officers employed by a mental health treatment facility must receive specialized training above and beyond basic certification.

An inmate receiving mental health treatment must be subject to the same standards applied to other inmates in the department, including, but not limited to, consideration for parole, release by reason of gain-time allowances, and release by expiration of sentence.[45]

Procedure for Placement

If an inmate is deemed mentally ill and in need of care and treatment, he or she may be placed in a mental health treatment facility after notice and hearing, and upon recommendation of the warden. The procedure for placement in a mental health treatment facility is as follows:[46]

- The warden files a petition with the court in the county where the inmate is housed. The petition must include the warden's recommendation supported by the expert opinion of a psychiatrist and the second opinion of a psychiatrist or psychological professional.
- A copy of the petition must be served to the inmate, accompanied by a written notice that an inmate may apply to have an attorney appointed if the inmate cannot afford one. The attorney must have access to the inmate and any records that are relevant to the representation of the inmate.
- The hearing must be held in the same county and one of the inmate's physicians at the facility must appear as a witness at the hearing.
- If the inmate is found mentally ill and in need of care, the court must order the inmate be placed in a mental health treatment facility or, if the inmate is at a mental health treatment facility, that he or she be retained there. The court must authorize the facility to retain the inmate for up to six months. If continued placement is necessary, the warden shall apply to the Division of Administrative Hearings, for an order authorizing continued placement.

The current procedure for a hearing on the placement of an inmate in a mental health treatment facility provides:[47]

- The court must serve notice on the warden of the facility where the inmate is confined and serve the allegedly mentally ill inmate. The notice must specify the date, time, and place of the hearing; the basis for the allegation of mental illness; and the names of the examining experts. The hearing shall be held within 5 days, and the court may appoint a general or special magistrate to preside. One of the experts whose opinion supported the petition for placement must be present at the hearing.
- If, at the hearing, the court finds that the inmate is mentally ill and in need of care and treatment, the court must order that he or she be placed in a mental health treatment facility. The court must provide a copy of the order and all supporting documentation relating to the

[44] Section 945.42(13), F.S.
[45] Section 945.49, F.S.
[46] Section 945.43(2), F.S.
[47] Section 945.43(3), F.S.

inmate's condition to the warden of the treatment facility. If the court finds that the inmate is not mentally ill, the petition for placement is dismissed.

The court may waive the presence of the inmate at the hearing if it is in the best interests of the inmate and the inmate's counsel does not object. The department may transport the inmate to the location of the hearing if it is not conducted at the facility or electronically.[48] The warden of an institution in which a mental health treatment facility is located may refuse to place any inmate in that treatment facility who is not accompanied by adequate court orders and documentation, as required in these sections.[49]

Procedure for Emergency Placement

An inmate may be placed in a mental health treatment facility on an emergency basis if he or she is mentally ill and in immediate need of care and treatment. If such care and treatment cannot be provided at the institution where the inmate is confined, he or she may be placed immediately in a mental health treatment facility accompanied by the recommendation of the warden of the institution where the inmate is confined. The recommendation must state the need for the emergency placement and include a written opinion of a physician verifying the need. Upon placement, the inmate shall be evaluated, if the inmate is determined to be in need of treatment or care, the warden initiates proceedings for placement.[50]

Procedure for Continued Placement

An inmate may be retained in a mental health treatment facility if he or she is mentally ill and continues to be in need of care and treatment. The procedure for continued placement is as follows:

- Prior to expiration of the period in which the inmate is being housed in a mental health treatment facility, the warden must file a petition with the Division of Administrative Hearings accompanied by a statement from the inmate's physician justifying the petition and providing a summary of the inmate's treatment and the individualized plan for the inmate.[51]
- Notification is mailed to the inmate, along with a waiver-of-hearing form and the completed petition, requesting the inmate's signature. The waiver-of-hearing form shall require express and informed consent and shall state the inmate is entitled to be represented by an attorney.[52]
- The hearing is an administrative hearing and conducted in accordance with ch. 120, F.S.,[53] except that an order entered by the administrative law judge is final and subject to judicial review. An administrative law judge shall be assigned by the Division of Administrative Hearings.[54]

[48] Section 945.43(3)(a), F.S.
[49] Section 945.43(4), F.S.
[50] Section 945.44, F.S.
[51] Section 945.45(2)(a), F.S.
[52] If the inmate does not sign the petition, or if the inmate does not sign a waiver within 15 days, the administrative law judge must notice a hearing with regard to the inmate involved in accordance with ss. 120.569 and 120.57(1), F.S.
Section 945.45(2)(b), F.S.
[53] Chapter 120, F.S., provides procedure for all administrative hearings.
[54] Section 945.45(3)(a), F.S.

- If the administrative law judge finds the inmate no longer meets the criteria for placement, the inmate will be transferred out of the mental health treatment facility.[55]
- If the inmate waives the hearing or if the administrative law judge finds the inmate is in need of continued placement, the administrative law judge will order continued placement for a period not to exceed one year. This procedure shall be repeated prior to the expiration of each additional one year period.[56]

The administrative law judge may appoint a private pro bono attorney in the circuit in which the treatment facility is located to represent the inmate.[57] The presence of the inmate at the hearing may be waived if such waiver is consistent with the best interest of the inmate and the inmate's counsel does not object.[58]

Involuntary Placement with Respect to Scheduled Release

If an inmate who is receiving mental health treatment is scheduled for release through expiration of sentence or any other means, but continues to be mentally ill and in need of care and treatment, the warden is authorized to initiate procedures for involuntary placement 60 days prior to release.[59] Additionally, the warden may initiate procedures for involuntary examination for any inmate who has a mental illness and meets the criteria under s. 394.463(1), F.S.[60,61]

The DOC may transport an individual who is being released from its custody to a receiving or treatment facility for involuntary examination or placement. Transport must be made to a facility specified by the DCF, or the nearest receiving facility if not specified.[62]

Discharge of an Inmate from Mental Health Treatment

An inmate must be discharged from mental health treatment under the following conditions:[63]

- The inmate is no longer in need of care and treatment, he or she may be transferred out of the mental health treatment facility and provided with appropriate mental health services; or
- If the inmate's sentence expires during his or her treatment, but he or she is no longer in need of care as an inpatient, the inmate may be released with a recommendation for outpatient treatment.

[55] Section 945.45(3)(d), F.S.
[56] Section 945.45(3)(e), F.S.
[57] Section 945.45(3)(b), F.S.
[58] Section 945.45(3)(c), F.S.
[59] Section 945.46(1), F.S.
[60] The Florida Mental Health Act finds a person may be ordered for involuntary inpatient placement for treatment if he or she has a mental illness and because of that illness has either refused voluntary placement or is unable to determine whether inpatient placement is necessary and is incapable for surviving alone or with the help of willing friends or family and is likely to suffer from neglect, refuse to take care of themselves, or there is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others.
[61] Section 945.46(2), F.S.
[62] Section 945.46(3), F.S.
[63] Section 945.47(1), F.S.

At any time that an inmate who has received mental health treatment 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 FCOR and to the DCF upon request.[64]

Involuntary Treatment

An inmate in a mental health treatment facility has the right to receive treatment that is suited to his or her needs and that is provided in a humane psychological environment. Such treatment must be administered skillfully, safely, and humanely with respect for the inmate's dignity and personal integrity. An inmate must be asked to give his or her express and informed written consent for such treatment.[65]

If an inmate has refused to give express and informed consent for treatment, the warden of the mental health treatment facility must petition the circuit court serving the county in which the facility is located for an order authorizing the treatment of the inmate. The inmate must be provided a copy of the petition along with the proposed treatment, basis for treatment, names of examining experts, and the date, time, and location of the hearing.[66]

The hearing on the petition for involuntary treatment must be held within five days after the petition is filed. The inmate may have an attorney represent him or her, or if indigent, the court must appoint the office of the public defender. The inmate may testify or not, may cross-examine witnesses testifying on behalf of the facility, and may present his or her own witnesses. The inmate's presence may be waived. One of the inmate's physicians whose opinion supported the petition shall appear as a witness.[67]

The court must determine by *clear and convincing evidence* whether the inmate is mentally ill, whether such treatment is essential to the care of the inmate, and whether the treatment is experimental or presents an unreasonable risk of serious, hazardous, or irreversible side effects. The court must consider at least the following:[68]

- The inmate's expressed preference regarding treatment;
- The probability of adverse side effects;
- The prognosis for the inmate without treatment; and
- The prognosis for the inmate with treatment.

An order authorizing involuntary treatment authorizes treatment for a period not to exceed 90 days following the date of the order. If the inmate is still in need of treatment, the warden must petition the court for an order authorizing the continuation of treatment for another 90-day

[64] Section 945.47(2), F.S.
[65] The "right to express and informed consent" as listed in s. 945.48, F.S., means to consent voluntarily given in writing after conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment; common side effects of the treatment, if any; the expected duration of the treatment; and the alternative treatment available. The explanation shall enable the inmate to make a knowing and willful decision without any element of fraud, deceit, or duress or any other form of constraint or coercion. Section 945.48(2), F.S.
[66] Section 945.48(3), F.S.
[67] Section 945.48(4)(a), F.S.
[68] Section 945.48(4)(b), F.S.

period. This process is repeated until the inmate provides express and informed consent or is no longer in need of treatment.[69]

Emergency Treatment

In an emergency situation in which there is immediate danger to the health and safety of an inmate or other inmates, emergency treatment may be provided at a mental health treatment facility upon the written order of a physician for a period not to exceed 48 hours.

If, after the 48-hour period, the inmate has not given express and informed consent to the treatment initially refused, the warden must petition the circuit court within 48 hours, excluding weekends and legal holidays, for an order authorizing the continued treatment of the inmate.

In the interim, treatment may be continued upon the written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the inmate or others. If an inmate must be isolated for mental health purposes, that decision must be reviewed within 72 hours by a different psychological professional or a physician other than the one making the original placement.[70]

Additionally, when the consent of an inmate cannot be obtained, the warden of a mental health treatment facility, or his or her designated representative, with the concurrence of the inmate's attending physician, may authorize emergency surgical or nonpsychiatric medical treatment if deemed lifesaving or there is a situation threating serious bodily harm to the inmate.[71]

Health Care Advance Directives

Health care advance directives as defined in ch. 765, F.S., do not directly address inmates in custody of the DOC.

Contractor-Operated Correctional Facilities

A contract entered into for the operation of contractor-operated correctional facilities, formerly known as private prisons, must maximize the cost savings[72] of such facilities and:

- Is not exempt from ch. 287, F.S., including the competitive solicitation requirements.
- Be executed with the contractor most qualified.
- Indemnify the state and the DOC against any and all liability.
- Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract.
- Require the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.
- Establish operations standards for correctional facilities subject to the contract.

[69] Section 945.48(4)(c), F.S.
[70] Section 945.48(5), F.S.
[71] Section 945.48(6), F.S.
[72] The department may not enter into a contract or series of contracts unless the DOC determines that the contract or series of contracts in total for the facility will result in a cost savings to the state of at least 7 percent over the public provision of a similar facility. Section 957.07, F.S.

- 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 DOC in comparable facilities.
- Require the selection and appointment of a full-time contract monitor, appointed and supervised by the DOC.
- Be for a period of three years and may be renewed for successive two year periods thereafter.[73]

Florida Commission on Offender Review (FCOR)

The FCOR makes a variety of determinations regarding parole and other releases, and reviews releasees' supervision status every two years. In both parole and conditional medical release hearings, testimony and pertinent information may be provided by a representative of an inmate, an inmate's family, by victims of the offense, and the victim's family. During hearings, the commission conducts other types of proceedings, such as imposing conditions of conditional release or addiction recovery supervision. The commission makes final determinations with regard to revocation of post release supervision, where a releasee may have violated conditions of their release.[74]

The FCOR consists of three commissioners[75] appointed by the Governor and Cabinet from a list of eligible applicants submitted by the parole qualifications committee. Each appointment must be certified to the Senate for confirmation. The membership of the commission must include representation from minority persons.[76,77] Commissioners serve a term of six years, and no person is eligible to be appointed for more than two consecutive six year terms.[78]

The parole qualifications committee consists of five persons who are appointed by the Governor and Cabinet. The committee provides for the advertisement and the receiving of applications for any position or positions.[79] The committee is to submit a list of three eligible applicants which may include an incumbent commissioner. Upon receiving a list of eligible persons from the committee, the Governor and Cabinet may reject the list. If so, the committee must reinitiate the application and examination procedure.[80]

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[73] Section 957.04(1)(a)-(i), F.S.
[74] Florida Commission on Offender Review, *Organization*, available at: https://www.fcor.state.fl.us/overview.shtml (last visited March 20, 2025).
[75] The Florida Commission on Offender Review was created to consist of six members who are residents of the state. Effective July 1, 1996, the membership of the commission shall consist of three members. Section 947.01, F.S.
[76] "Minority person" means a lawful, permanent resident of Florida who is: (a) an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; (b) a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; (c) an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asian, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; (d) a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; and (e) an American woman. Section 288.703(4), F.S.
[77] Section 947.02(1), F.S.
[78] Section 947.03, F.S.
[79] Section 947.02(2), F.S.
[80] Section 947.02(4), F.S.

Whenever the Legislature decreases the membership of the FCOR, all terms of office expire. Under such circumstances, the Governor and Cabinet must expedite the appointment of commissioners. For expediated appointments, the commissioners will be directly appointed by the Governor and Cabinet. The commission must still include representation from minority persons.[81]

III. Effect of Proposed Changes:

The bill amends multiple sections of law regarding prepayment court costs and the statute of limitations on prisoners' lawsuits, execution methods for the death penalty, location tracking for inmates and other persons, the parole qualifications committee, contractor-operated correctional facilities, minority representation requirements, and the Corrections Mental Health Act.

Litigation and Fees

Section 57.085, F.S., is amended to specify that the deferral of prepayment of court costs and fees does not apply to challenges to prison disciplinary reports.

The bill amends s. 95.11, F.S., to provide a statute of limitations of one year to all petitions, extraordinary writs, tort actions, or other actions which concern any condition of confinement of a prisoner.

The bill creates s. 760.701, F.S., to restrict a prisoner from pursuing a civil action until all administrative remedies are fully exhausted. Additionally, the bill directs the court to dismiss any action by a prisoner if the court finds the action is frivolous, malicious, or fails to state a claim upon which relief can be granted or seeks monetary relief from a defendant who is immune from such relief.

Further, the bill prohibits a prisoner, or person on behalf of a prisoner, from filing a lawsuit, or any state tort action, relating to the conditions of confinement for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act. The bill provides any action concerning the condition of confinement is subjected to a one-year time limit.

Sentencing

The bill amends s. 775.087, F.S., to allow for a court to impose consecutive sentences for any person who is convicted for committing an offense listed under the 10-20-Life statute, in conjunction with any other felony offense, and mandates that the court impose any term of imprisonment under 10-20-Life consecutively.

The bill amends ss. 922.10 and 922.105, F.S., to allow for an inmate who has received the death sentence to be executed by a method not deemed unconstitutional, if electrocution and lethal injection are deemed to be unconstitutional or if the acquisition of chemicals necessary for lethal injection becomes impossible or impractical.

[81] Section 947.021, F.S.

Tracking

The bill amends s. 934.425, F.S., to define "confinement center" as a jail, center, facility, or institution designed to house a person or confine a person's movements in accordance with:

- Ch. 394, F.S., relating to mental health facilities;
- Ch. 908, F.S., relating to immigration;
- Ch. 941, F.S., relating to corrections interstate cooperation;
- Ch. 944, F.S., relating to the state correctional system;
- Ch. 945, F.S., relating to the DOC;
- Ch. 950, F.S., relating to jails and jailers;
- Ch. 951, F.S., relating to county and municipal prisoners;
- Ch. 957, F.S., relating to private prisons;
- Ch. 958, F.S., relating to youthful offenders;
- Ch. 984, F.S., relating to the DCF; and,
- Ch. 985, F.S., relating to juvenile justice interstate compact.

The bill provides an exception to the criminal offense for the installation or use of a tracking device to allow for a person who while working for or at a confinement center installs, places, or uses a tracking device or tracking application on a person within their care, custody, or control as part of his or her employment.

Corrections Mental Health Act

The bill amends and substantially rewords the Corrections Mental Health Act under ss. 945.41 – 945.49, F.S., to provide updated, clarifying, or technical language, as well as provide substantial changes to the procedure for placement and treatment of inmates.

The bill amends s. 945.41, F.S., to revise legislative intent and authorize the DOC to purchase treatment materials and equipment, and contract with entities, persons, or agencies qualified to provide mental health treatment and services to support inmate rehabilitation.

Inmates in the custody of the DOC must be offered the opportunity to participate in the development of a written individualized treatment plan. The bill requires that inmates who have mental illnesses that require intensive mental health inpatient treatment or services be offered an inpatient setting designated for that purpose, and inmates who require intensive hospitalization to be transferred to a DOC mental health treatment facility. Inmates must be offered the least restrictive appropriate available treatment and services based on their assessed needs and best interests.

A mentally competent inmate must give his or her express and informed consent[82] for mental health treatment. The bill requires that before such consent is given, details of treatment must be explained in plain language to the inmate and that any consent given for treatment may be

[82] The following is required to be explained in plain language: the proposed treatment, purpose of the treatment, the common risks, benefits, and side effects of treatment and specific dosage of medication if applicable, alternative treatment modalities, the approximate length of treatment, the potential effects of stopping treatment, and how treatment will be monitored.

revoked orally or in writing before or during the treatment by the inmate or a person legally authorized to make those health care decisions.

Inmates who are incompetent to consent must receive treatment deemed necessary for their appropriate care and for the safety of the inmate or others.

The bill authorizes nonpsychiatric, emergency surgical treatment or routine medical treatment for an inmate placed in a mental health treatment facility when the express and informed consent cannot be obtained or the inmate is incompetent to consent to treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.

The bill amends s. 945.42, F.S., to define the terms "express and informed consent,"[83] "gravely disabled,"[84] "incompetent to consent to treatment,"[85] "involuntary examination,"[86] "likelihood of serious harm,"[87] and treatment,[88] and removes the definition and procedure for inmates that are "in immediate need of care and treatment."

Involuntary Examination

The bill substantially rewords s. 945.43, F.S., to provide a process for involuntary examination. An inmate's treating clinician may refer the inmate to a mental health facility for an involuntary examination if there is reason to believe the inmate has a mental illness and is in need of care and treatment. Upon arrival, the inmate must be examined by a psychiatrist and a second psychiatrist or psychological professional to determine whether the inmate is in need of care and treatment. If there is a need for treatment, the psychiatrist will propose a recommended course of treatment and the warden will initiate proceedings for placement and for involuntary treatment as specified in s. 945.44, F.S.

[83] "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.
[84] "Gravely disabled" means a condition in which an inmate, as a result of a diagnosed mental illness is either in danger of serious physical harm resulting from the inmates failure to provide for his or her essential physical needs of food, clothing, hygiene, health, or safety without the assistance of others, or experiencing a substantial deterioration in behavioral functioning evidenced by the inmate's unremitting decline in volitional control over his or her actions.
[85] "Incompetent to consent to treatment" means a state in which an inmate's judgement 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 only refers to an inmate's inability to provide express and informed consent for medical and mental health treatment and services.
[86] "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.
[87] "Likelihood of serious harm" means the following: 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; 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 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.
[88] "Treatment" means psychotropic medication prescribed by a medical practitioner licensed pursuant to ch. 458 or 459, F.S., including those laboratory tests and related medical procedures that are essential for the safe and effective administration of psychotropic medication and psychological interventions and services such as group and individual psychotherapy, activity therapy, recreational therapy, and music therapy.

The involuntary examination and initiation of court proceedings must be completed within 10 calendar days after arrival and may remain in the mental health treatment facility pending a hearing after the timely filing of a petition as described in s. 945.44, F.S. Pending such, necessary treatment may be provided as described in s. 945.44, F.S.

If the inmate is not in need of care and treatment, the inmate must be transferred out of the mental health treatment facility and provided with appropriate mental health services.

Placement and Treatment of an Inmate in a Mental Health Treatment Facility

The bill substantially rewords s. 945.44, F.S., to provide the criteria and hearing procedures for petitions relating to the placement and treatment of an inmate in a mental health treatment facility. This bill authorizes the DOC to place an inmate in a mental health treatment facility if he or she is mentally ill and is in need of care and treatment. An inmate may receive involuntary mental health treatment that is deemed to be essential for the appropriate care and safety of the inmate or others if the inmate is either gravely disabled or presents a likelihood of serious harm.

An inmate may be placed and involuntarily treated in a mental health treatment facility after notice and hearing. The procedure for petitions for placement and treatment are provided in the bill.

The bill provides that the court must find by clear and convincing evidence that the inmate is mentally ill and in need of care and treatment in order to place the inmate in a mental health treatment facility. The bill provides the court must make additional specified findings to administer treatment.

The bill authorizes status hearings and the continuation of placement until an inmate is no longer in need of care and treatment. The bill authorizes the court to dismiss the petition and transfer the inmate out of the mental health treatment facility if the criteria for placement and treatment are not satisfied.

The bill repeals s. 945.45, F.S., relating to the continued placement of inmates in mental health facilities. Language pertaining to continued placement is described in s. 945.44, F.S., under the bill.

Initiation of Involuntary Placement Proceedings with Inmates Scheduled for Release

The bill amends s. 945.46, F.S., to provide the process for involuntary placement when an inmate continues to be mentally ill and in need of care and treatment but is scheduled for release.

The warden must file a petition 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 must provide copies of the petition to the DCF, the inmate, the state attorney and the public defender. The bill adds language to ensure a fee may not be charged for the filing of the petition.

The bill requires within one court working day after the filing of the petition for a public defender to be appointed, unless the inmate is otherwise represented. The state attorney for the

circuit in which the inmate is located will represent the state in these proceedings rather than the warden. The bill provides the proceedings are governed by ch. 394, F.S.

The court may order that the hearing be conducted by electronic means, at the facility in person, or at another location.

The bill amends s. 945.47, F.S., to specify that at any time an inmate who has received mental health treatment while in the custody of the DOC becomes eligible for release, a record of the treatment may be provided to the FCOR and the DCF *for the purpose of arranging post release aftercare placement and to prospective recipient inpatient health care or residential facilities* upon request.

Emergency Treatment Orders and Use of Force

The bill substantially rewords s. 945.48, F.S., to authorize the DOC to involuntary administer psychotropic medication to an inmate on an emergency basis without following the procedure outlined in s. 945.43, F.S. 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.

An emergency exists when the inmate with a mental illness presents an immediate threat of:
- Bodily harm to self or others; or
- Extreme deterioration in behavior functioning secondary to the mental illness.

The bill authorizes the administration of psychotropic medication not to exceed 72 hours, after which the treating physician must refer the inmate for an involuntary examination in accordance with ss. 945.43 and 945.44, F.S. The warden must transfer the inmate to a mental health treatment facility within 48 hours, excluding weekends and legal holidays.

The DOC may use force when and to the extent that it reasonably appears necessary to effectuate the treatment, effectuate clinically necessary hygiene of an inmate, for the application of physical restraint, or pursuant to a valid court order.

Management and Treatment of Self-Injurious Behaviors

The bill creates s. 945.485, F.S., to provide procedures for when an inmate is engaging in active or ongoing self-injurious behavior and has refused to provide express and informed consent.

If an inmate is determined incompetent to consent to treatment, the inmate's treating physician is required to proceed as set forth in s. 945.6042, F.S, created under this bill. The bill provides proceedings for when an 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 the DOC staff, other inmates or the security, internal order, or discipline of the institution.

If the inmate is competent, refusing necessary surgical or medical treatment, and is engaging in active or ongoing self-injurious behavior that presents a threat, the warden must petition the court for an order compelling the inmate to submit to emergency surgical intervention or other

medical services to the extent necessary to remedy the threat. An inmate must be provided with a copy of the petition and other specified information. The inmate is entitled to representation, and the court may appoint the public defender or private counsel to represent the inmate. The hearing must be held as expeditiously as possible, but no later than five calendar days after filing.

The bill provides considerations for the court and requires the court to determine whether the warden has established by clear and convincing evidence that the state interest is sufficient to outweigh the inmate's right to refuse treatment.

Inmate Health Care Advance Directives

The bill creates s. 945.6042, F.S., to provide the DOC must offer inmates an opportunity to sign an advance health care directive. The bill provides definitions for "health care facility,"[89] "incapacity,"[90] "informed consent,"[91] "inmate,"[92] ombudsman,[93] proxy,[94] and proxy review team.[95]

The bill provides procedure relating to the capacity of an inmate. An inmate's treating physician must evaluate the inmate's capacity and enter the evaluation in the inmate's medical record if the inmate lacks capacity. A second opinion is required if the evaluating physician has a question as to whether the inmate lacks capacity and both evaluations must be entered in the medical record. Incapacity cannot be inferred from an inmate's involuntary hospitalization for mental illness or from his or her intellectual disability.

If the inmate is found to be incapacitated and has a designated health care surrogate in accordance with ch. 765, F.S., the surrogate must be notified. If the inmate has not designated a health care surrogate, the facility must appoint a proxy to make health care decisions.

The bill requires the DOC to provide each inmate written information concerning advance directives and necessary forms to execute an advance directive, and document such in the inmate's medical records. An advance directive may be amended or revoked at any time by a competent inmate through various means such as written and spoken communication.

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[89] "Health care facility" has the same meaning as in s. 765.101, F.S., and includes any correctional institution or facility where health care is provided.
[90] "Incapacity" or "Incompetent" means an inmate is physically or mentally unable to communicate a willful and knowing health care decision.
[91] "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.
[92] "Inmate" means any person committed to the custody of the DOC.
[93] "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.
[94] "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, F.S., to make health care decisions for such inmate.
[95] "Proxy review team" means a team of at least five members, appointed by the Assistant Secretary for Health Services. The team is composed of, at a minimum, one physician licensed pursuant to ch. 458 or ch. 459, F.S., one psychologist licensed pursuant to ch. 490, F.S., one nurse licensed pursuant to ch. 464, F.S., and one department chaplain.

If the inmate has not designated a health care surrogate, health care decisions may be made for the inmate by any individuals specified in the priority order provided in s. 765.401(1)(a)-(g), F.S.,[96] as a proxy. If there are no individuals available, willing, or competent, the warden must notify the Assistant Secretary for Health Services or designee to appoint a DOC ombudsman to serve as a proxy until the inmate regains capacity or is no longer incarcerated in the custody of the DOC. The proxy must make any health care decision based on informed consent and that the proxy reasonable believes the inmate would have made that decision. If there is no indication of what decision the inmate would make, the proxy may consider the inmate's best interests.

The bill authorizes the use of force 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. The bill also provides immunity from liability for a DOC health care provider, ombudsman, or other employees who act under the direction of a health care provider.

The bill amends s. 945.49, F.S., to remove the requirement for the DOC to work in cooperation with the Mental Health Program Office of the DCF to adopt rules necessary to administer sections under the Corrections Mental Health Act.

Additional Requirements

The bill amends s. 947.02, F.S., to eliminate the Parole Qualification Committee. The members of the FCOR are to be directly appointed by the Governor and Cabinet. The bill also removes the requirement for the membership of the FCOR commission to include representation from minority persons. Sections 947.021 and 947.12 F.S., are amended to conform with the elimination of the Parole Qualifications Committee.

The bill amends s. 957.04, F.S., to allow the DOC to exclude certain services from a contract for private correctional services and retain the responsibility for the delivery of such services whenever the DOC finds it to be in the best interest of the state. Additionally, the requirement for each contract to include substantial minority participation is removed.

The bill amends s. 957.09, F.S., to remove language relating to the participation of minority business enterprises.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[96] A judicially appointed guardian; spouse; adult child of the patient or a majority of adult children; a parent; the adult sibling or a majority of the adult siblings; an adult relative who has exhibited special care and concern and has maintained regular contact and is familiar with the patients activities, health, and religious or moral beliefs; or a close friend is authorized under this section to make health care decisions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Some courts have found parts of the PLRA to be unconstitutional. This language may be subjected to litigation.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the DOC due to an increase in mental health services and treatment as well as transporting inmates to facilities to meet those needs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 57.085, 95.11, 775.087, 922.10, 922.105, 934.425, 945.41, 945.42. 945.43, 945.44, 945.46, 945.47, 945.48, 945.49, 947.02, 947.021, 947.12, 957.04, 957.09.
This bill creates the following sections of the Florida Statutes: 760.701, 945.485, 945.6402.
This bill repeals section 945.45 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.