

FLORIDA HOUSE OF REPRESENTATIVES

FINAL BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: [CS/CS/HB 903](#)

TITLE: Corrections

SPONSOR(S): Jacques

COMPANION BILL: [CS/CS/SB 1604](#) (Martin)

LINKED BILLS: None

RELATED BILLS: None

FINAL HOUSE FLOOR ACTION: 83 Y's 33 N's **GOVERNOR'S ACTION:** Pending

SUMMARY

Effect of the Bill:

CS/CS/HB 903 makes the following changes relating to the Department of Corrections (DOC):

- Applies the lien requirement in the Prisoner Indigency Statute to certain legal actions and provides a one-year statute of limitation on specified petitions and tort actions filed by an indigent prisoner.
- Provides requirements related to federal civil actions under section 1983 filed by prisoners.
- Clarifies when consecutive sentences are required to be imposed under 10-20-Life.
- Authorizes a death sentence to be executed by any method not deemed unconstitutional under specified circumstances.
- Authorizes a warden to directly petition the circuit court for an order compelling an inmate to submit to emergency surgical intervention or other medical services when the inmate is competent but refusing necessary treatment and is engaging in active or ongoing self-injurious behavior that presents a threat to the safety of DOC staff or other inmates.
- Exempts jail and prison personnel from the criminal prohibitions on the installation and use of tracking devices and applications in specified circumstances.
- Overhauls the DOC Mental Health Act and establishes procedures related to advance health care directives for inmates.
- Changes the process for the appointment of commissioners to the Florida Commission on Offender Review.
- Amends certain DOC contract requirements related to the provision of specified inmate services.

Fiscal or Economic Impact:

The bill may have an indeterminate fiscal impact on state government.

[JUMP TO](#)

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

ANALYSIS

EFFECT OF THE BILL:

Prisoner Indigency Statute

CS/CS/HB 903 makes a challenge to prison disciplinary reports subject to the lien requirement in the Prisoner Indigency Statute. Accordingly, an indigent prisoner initiating a judicial proceeding to challenge his or her prison disciplinary report, which may be asserted as a gain time challenge, will be subject to a lien being placed on his or her trust account for the full amount of court costs and fees associated with filing such an action. (Section [1](#))

Statute of Limitations for Actions Filed by Indigent Prisoners

The bill requires that specified petitions and tort actions, including those related to a claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission, filed by an indigent prisoner be commenced within one year after the time the incident, conduct, or conditions occurred or within one year after the time the incident, conduct, or conditions were discovered, or should have been discovered. (Section [2](#))

STORAGE NAME: h0903z

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Provisions Controlling Section 1983 Claims

The bill prohibits a prisoner, or a person on the behalf of a prisoner, from bringing an action relating to the conditions of the prisoner's confinement under 42 U.S.C. § 1983, relating to a federal civil action for deprivation of rights, or any other state or federal law, until the prisoner has fully exhausted all available administrative remedies. (Section [3](#))

The bill authorizes a court to dismiss any action brought relating to the conditions of a prisoner's confinement on its own motion or on the motion of another party, if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. The bill requires the court to review any such action, as it would an action filed by an indigent prisoner prior to the initiation of a judicial proceeding. (Section [3](#))

The bill prohibits a prisoner, or a person on the behalf of a prisoner, from bringing an action relating to the conditions of the prisoner's confinement under 42 U.S.C. § 1983, or any state tort action, for mental or emotional injury suffered by the prisoner while in custody without a prior showing of physical injury or the commission of a specified sexual act. (Section [3](#))

10-20-Life

The bill clarifies that a court must impose mandatory minimum terms of imprisonment required under [s. 775.087, F.S.](#), or 10-20-Life, when a person commits a specified crime while possessing a firearm, destructive device, semiautomatic firearm and its high-capacity detachable box magazine, or machine gun, consecutively to each other. The bill further authorizes a court to impose a mandatory minimum term of imprisonment under 10-20-Life consecutively to any other term of imprisonment imposed for any other felony offense not subject 10-20-Life. (Section [4](#))

Methods of Execution of a Death Sentence

In addition to lethal injection or electrocution, the bill authorizes a death sentence to be executed by any method not deemed unconstitutional if the acquisition of chemicals necessary for lethal injection becomes impossible or impractical. (Sections [5](#) and [6](#))

Installation and Use of Tracking Devices and Applications

The bill exempts the following individuals who lawfully install, place, or use a tracking device or tracking application on a person within their care, custody, or control and in the scope of their employment, from the criminal prohibitions against installation and use of tracking devices or applications:

- Correctional officers.
- Correctional probation officers.
- Other officers or support personnel of DOC.
- Juvenile probation officers.
- Authorized agents or designees or delinquency program staff of the Department of Juvenile Justice.

(Section [7](#))

Additionally, the bill exempts persons authorized to install, place, or use a tracking device or tracking application pursuant to a court order from such criminal prohibitions. (Section [7](#))

Corrections Mental Health Act

The bill authorizes DOC to purchase treatment materials and equipment to:

- Support inmate rehabilitation.
- Ameliorate disabling mental symptoms associated with impairment in behavioral functioning, sensory and motor skills, and impulse control.
- Improve adaptive coping skills. (Section [8](#))

The bill specifies that the Corrections Mental Health Act does not supplement, amend, or change the responsibilities of the Department of Children and Families pursuant to the Forensic Client Services Act, which governs forensic services for persons who are incompetent to proceed. (Section [8](#))

The bill removes the requirement that DOC work with the Mental Health Program Office of the Department of Children and Families to develop and adopt rules to administer the Corrections Mental Health Act. (Section [17](#))

The bill requires that an inmate in the custody of DOC be offered treatment that is suited to his or her needs as determined by health care staff and that is provided in a humane psychological environment. The bill requires that such treatment be administered skillfully, safely, and humanely with respect for the inmate's dignity and personal integrity. (Section [8](#))

The bill requires that inmates receiving mental health treatment and services be offered the opportunity to participate in the development of a written individualized treatment plan and provided a copy of such plan before its implementation. (Section [8](#))

The bill updates the information required to be provided to an inmate so that he or she can make an informed decision regarding mental health treatment. The following information must be provided to and explained in plain language to the inmate:

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

The bill requires that inmates who are determined to be incompetent to consent to treatment receive treatment deemed to be necessary for their appropriate care and for the safety of the inmate or others. (Section [8](#))

The bill authorizes the warden of a mental health treatment facility, or his or her designee, under the direction of the inmate's attending physician, to authorize non-psychiatric, emergency surgical treatment or other medical treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate and express and informed consent cannot be obtained from such inmate or the inmate is incompetent to consent to treatment. (Section [8](#))

Involuntary Examination

The bill establishes a procedure for involuntary examination of an inmate. Under the bill, if there is a reason to believe that an inmate has a mental illness and the inmate is in need of care and treatment, the inmate's treating clinician can refer the inmate to a mental health treatment facility for an involuntary examination. Upon such a referral, the warden of the facility where the inmate is housed must transfer the inmate to a mental health treatment facility where the inmate must be examined by two psychiatrists or a psychiatrist and another psychological professional to determine whether the inmate is in need of care and treatment. (Section [10](#))

The bill requires that if, after the involuntary examination, the inmate is determined to be in need of care and treatment, the psychiatrist must propose a recommended course of treatment that is essential to the care of the inmate and the warden must initiate proceedings for involuntary placement and treatment of the inmate at a mental health treatment facility. However, if after examination, the inmate is found *not* to be in need of care and treatment, he or she must be transferred out of the treatment facility and provided with appropriate mental health services. (Section [10](#))

The bill requires that the involuntary examination and the initiation of court proceedings for involuntary placement and treatment of the inmate be completed within 10 calendar days after arrival at the mental health treatment facility. (Section [10](#))

The bill authorizes an inmate to remain in the mental health treatment facility pending a hearing on a petition for involuntary placement. Additionally, the bill authorizes necessary emergency treatment to be administered to the inmate upon the written order of a physician pending such hearing. (Section [10](#))

Involuntary Placement and Involuntary Treatment

When an inmate is involuntarily placed in a mental health treatment facility, the bill authorizes the administration of involuntary mental health treatment that is deemed 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. (Section [11](#))

Under the bill “gravely disabled” means a condition in which an inmate, as a result of a diagnosed mental illness, is:

- In danger of serious physical harm resulting from the inmate’s failure to provide for his or her essential physical needs of food, clothing, hygiene, health, or safety without the assistance of others; or
- Experiencing a substantial deterioration in behavioral functioning evidenced by the inmate’s unremitting decline in volitional control over his or her actions. (Section [9](#))

Additionally, “likelihood of serious harm” means:

- 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. (Section [9](#))

Under the bill, the warden of the facility where the inmate is confined may petition the circuit court for involuntary placement and treatment of a mentally ill inmate simultaneously. The bill requires that the petition be supported by the expert opinion of at least one of the inmate’s treating physicians. The bill requires a hearing on such a petition be conducted no later than 14 calendar days after such petition is filed. This change expands the timeframe in which a hearing on such a petition must be held from five days to 14 days, which allows additional time to prepare the inmate for the hearing. Additionally, given the bill’s authorization to immediately move an inmate into a mental health treatment facility for involuntary examination prior to initiating the procedure for involuntary placement and treatment, the bill may reduce the necessary expediency of such a hearing. (Section [11](#))

In a hearing regarding both involuntary placement and treatment of a mentally ill inmate, the bill adds two additional findings the court must make by clear and convincing evidence; whether the inmate is:

- Gravely disabled or poses a likelihood of serious harm.
- Incompetent to consent to treatment. (Section [11](#))

Under the bill, “incompetent to consent to treatment” means a state in which an inmate’s judgment is so affected by mental illness that he or she lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment and services. The term is distinguished from the term “incompetent to proceed,” and only refers to an inmate’s inability to provide express and informed consent for medical or mental health treatment and services. (Section [9](#))

The bill extends the period for which a court may authorize an inmate to be involuntarily treated from 90 days to six months. (Section [11](#))

The bill further eliminates the requirement for a warden to apply to the Division of Administrative Hearings for continued placement of a mentally ill inmate and instead authorizes the warden to include continued placement in the same petition for continued treatment to the circuit court. (Sections [11](#) and [12](#))

The bill requires a warden initiating Baker Act proceedings for involuntary placement of an inmate receiving mental health treatment from DOC who is scheduled for release, to file a petition for such involuntary placement in the court in the county where the inmate is located. Upon the filing of such a petition, the clerk of court is required to provide copies to the Department of Children and Families, the inmate, and the state attorney and public

defender of the judicial circuit in which the inmate is located. The bill prohibits a fee from being charged for the filing of such a petition. The bill further requires the court to appoint the public defender to represent the inmate within one court working day after the filing of such a petition. (Section [13](#))

The bill authorizes any attorney representing the inmate in such a proceeding regarding involuntary placement to have access to the inmate, witnesses, and records relevant to the presentation of the inmate's case. The bill requires the attorney representing the inmate to represent the interests of the inmate, regardless of the source of payment to the attorney. Additionally, the bill requires the state attorney for the circuit in which the inmate is located to represent the state, rather than the petitioning warden, as the real party in interest in the proceeding. (Section [13](#))

The bill authorizes DOC to transport the inmate to the location of the hearing if the court orders the hearing to be conducted at a location other than the facility. The bill specifies that the remainder of such proceedings be governed by the Baker Act in ch. 394, F.S. (Section [13](#))

Emergency Treatment

The bill authorizes DOC to involuntarily administer psychotropic medication to an inmate on an emergency basis without following the newly-established procedure for involuntary examination. An emergency treatment order for psychotropic medication may be provided upon the written order of a physician in an emergency not exceeding 72 hours, excluding weekends and legal holidays. The bill provides that an emergency exists when an inmate with a mental illness presents an immediate threat of:

- Bodily harm to self or others; or
- Extreme deterioration in behavioral functioning secondary to the mental illness. (Section [15](#))

The bill provides that psychotropic medication may only be administered when the medication constitutes an appropriate treatment for a mental illness and its symptoms and alternative treatments are not available or indicated, or would not be effective. If after the 72-hour period the inmate has not given express and informed consent to the medication initially refused, the inmate's treating physician must refer the inmate for involuntary examination. Upon such a referral, the warden must, within 48 hours, excluding weekends and legal holidays, transfer the inmate to a mental health treatment facility. Upon transfer, the emergency treatment order may be continued upon the written order of a physician as long as the physician has determined that the emergency continues to present a danger to the safety of the inmate or others and the criteria discussed above are satisfied. If psychotropic medication is still recommended after the emergency, it may only be administered after following the procedures for involuntary treatment. (Section [15](#))

The bill authorizes an employee or agent of DOC to use physical force on an inmate when and to the extent reasonably necessary to effectuate emergency treatment of an inmate; for application of psychiatric restraint; to effectuate clinically necessary hygiene; or pursuant to a valid court order regarding involuntary placement and treatment or treatment of self-injurious behaviors. (Section [15](#))

Management and Treatment for Self-Injurious Behavior

The bill provides Legislative findings that non-suicidal, self-injurious behaviors in correctional institutions, or acts intended to cause bodily harm but not death, have increased in the correctional environment. Self-injurious behavior may include non-suicidal self-injury or self-mutilation, such as cutting, reopening wounds, and ingesting or inserting foreign objects or dangerous instruments into the body. The Legislature finds that these behaviors pose a significant threat to inmates, staff, and, in many cases, the safe and secure operation of the correctional institution. In addition, self-injurious behaviors, coupled with repeated refusals to provide express and informed consent for medical treatment and care, are a significant challenge for correctional medical and mental health professionals, resulting in higher costs for medical services, and may result in inadvertent mortality in the incarcerated population. (Section [16](#))

The bill provides that while the Legislature finds that an inmate retains the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse medical treatment or life-saving medical procedures, the inmate's right to privacy and decision-making regarding medical treatment may be outweighed by compelling state interests. (Section [16](#))

The bill requires the warden of the facility where the inmate is housed to consult with the inmate's treating physician regarding the inmate's medical and mental health status, current medical and mental health treatment needs, and competency to provide express and informed consent for treatment, when an inmate is engaging in active or ongoing self-injurious behavior and has refused to provide express and informed consent for treatment related to such behavior. (Section [16](#))

The bill requires an inmate's treating physician to proceed with the procedures outlined in the newly-established process regarding advanced health care directives, proxies, and ombudsmen for inmates, (Section [18](#)), regarding any necessary surgical or medical services if the physician has determined that the inmate has a mental illness and is incompetent to consent to treatment. If the physician finds the inmate is in need of care and treatment, the inmate must be referred for involuntary examination. (Section [16](#))

If, however, the inmate is competent but refusing necessary surgical or medical treatment, and engaging in active or ongoing self-injurious behavior that presents a threat to the safety of DOC staff or other inmates or the security, internal order, or discipline of the institution, the bill requires the warden to petition the circuit court directly, rather than go through the state attorney, for an order compelling the inmate to submit to emergency surgical intervention or other medical services to the extent necessary to remedy such threat. Such a petition must be supported by the expert opinion of at least one of the inmate's treating physicians and may be supported by other staff as necessary. (Section [16](#))

The bill requires that the inmate be provided with a copy of the petition along with the proposed intervention, the basis for the proposed intervention, the names of the testifying experts and witnesses, and the date, time, and location of the hearing. After considering the medical status of the inmate, public safety, and security concerns presented by transporting the inmate, the bill authorizes the court to order that the hearing be conducted by electronic means or in person at the institution or at another location designated by the court. If the hearing is ordered by the court to be conducted at a location other than the institution, the bill authorizes DOC to transport the inmate to the location of the hearing. (Section [16](#))

The bill requires the hearing on the petition to be held as expeditiously as possible after the petition is filed, but no later than five calendar days after filing. The bill authorizes the court to appoint a general or special magistrate to preside. Additionally, the bill authorizes the inmate to testify or not, as he or she chooses, to cross-examine witnesses testifying on behalf of the institution, and to present his or her own witnesses. (Section [16](#))

The bill authorizes the court to waive the presence of the inmate at the hearing if the waiver is consistent with the best interests of the inmate and the inmate's counsel does not object. (Section [16](#))

The bill requires the presiding court to determine whether the warden established by clear and convincing evidence that there is a compelling state interest sufficient to outweigh the inmate's right to refuse treatment. In making such a determination, the bill requires the court to consider all of the following:

- Preservation of the life of the inmate.
- Prevention of suicide.
- Protection of innocent third parties.
- Maintenance of the ethical integrity of the medical profession.
- Preservation of the security, internal order, or discipline of the institution.
- Rehabilitation of the inmate.
- Any other compelling state interest. (Section [16](#))

Where the court determines that there are compelling state interests sufficient to override the inmate's right to refuse treatment, the bill requires the court to enter an order authorizing emergency surgical intervention or other medical services, narrowly tailored and in the least intrusive manner possible, only as necessary to remedy the threat to the safety of third parties or the security, internal order, or discipline of the institution. Emergency surgical intervention or other medical services authorized by the court may be carried out at the institution or at a licensed hospital, as applicable. (Section [16](#))

The bill specifies that it does not repeal by implication any provision of [s. 766.103, F.S.](#), the Florida Medical Consent Law, or [s. 768.13, F.S.](#), the Good Samaritan Act. The bill provides that the Florida Medical Consent Law and the Good Samaritan Act shall be considered alternatives to this section. (Section [16](#))

Advance Health Care Directives, Proxies, and Ombudsmans

The bill adopts, modifies, and expands the existing provisions and protocols related to advanced health care directives in ch. 765, F.S., to apply to incarcerated inmates. Specifically, the bill outlines a procedure to determine the capacity of an inmate. Under the bill, an inmate is presumed to be capable of making health care decisions for himself or herself unless he or she is determined to be incapacitated. If an inmate has decision-making capacity, the inmate's wishes control and each physician or health care providers must clearly communicate a treatment plan and any change to such treatment plan before implementation of the plan or change to the plan. The bill provides that incapacity cannot be inferred from an inmate's involuntary hospitalization for mental illness or from his or her intellectual disability. (Section [18](#))

The bill provides that if an inmate's capacity to make health care decisions for himself or herself or to provide informed consent is in question, the inmate's treating physician at the health care facility where the inmate is located must evaluate the inmate's capacity and, if the evaluating physician concludes that the inmate lacks capacity, enter that evaluation into the inmate's record. If the evaluating physician has a question as to whether the inmate lacks capacity, another physician must evaluate the inmate's capacity. If the second physician confirms that the inmate lacks capacity, both physicians' evaluations must be entered into the inmate's medical record. (Section [18](#))

If an inmate is found to be incapacitated, the bill requires the institution's or facility's health care staff to notify the inmate's surrogate, if he or she has designated one, and to proceed as specified in ch. 765, F.S., relating to advanced health care directives. If the incapacitated inmate has not designated a health care surrogate, the health care facility must appoint a proxy to make health care decisions for the inmate. (Section [18](#))

The bill directs DOC to offer inmates the opportunity to execute an advance directive. More specifically, DOC is required to provide each inmate written information concerning advance directives and any forms necessary to allow an inmate to execute such a directive; however, neither DOC or its health care providers can require an inmate to execute such a directive. DOC and its health care providers are required to document in the inmate's medical record whether the inmate has executed an advanced directive. (Section [18](#))

The bill authorizes an advanced directive to be amended or revoked at any time by a competent inmate by:

- A signed, dated writing of intent to amend or revoke;
- The physical cancellation or destruction of the advance directive by the inmate or by another person in the inmate's presence and at the inmate's direction;
- An oral expression of intent to amend or revoke; or
- A subsequently executed advance directive that is materially different from a previously executed advance directive. (Section [18](#))

The bill provides that if an inmate has failed to execute an advance directive or designate a health care surrogate, or the health care surrogate is no longer available to make health care decisions for the inmate, the inmate must be appointed a proxy as contemplated in [s. 765.401, F.S.](#) (Section [18](#))

The bill authorizes the Assistant Secretary for Health Services, or his or her designee, to appoint a DOC ombudsman to serve as a proxy for an inmate if a proxy from the specified list of individuals in [s. 765.401, F.S.](#), cannot be located and the inmate is housed in a correctional institution or facility where health care is provided in a nonhospital setting. The appointment of such an ombudsman terminates when the inmate regains capacity or is no longer incarcerated. (Section [18](#))

Under the bill, an "ombudsman" means an individual designated and specifically trained by DOC 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. (Section [18](#))

Any decisions by an ombudsman to withhold or withdraw life-prolonging procedures will be reviewed by DOC's proxy review team. Under the bill, a "proxy review team" means a team of at least five members, appointed by the Assistant Secretary for Health Services. The team must be composed of, at a minimum, one physician, one psychologist, one nurse, and one DOC chaplain. (Section [18](#))

The bill authorizes an ombudsman serving as a proxy to request the assistance of the treating physician and a second physician not involved in the inmate's care to assist the proxy in evaluating the inmate's treatment. (Section [18](#))

The bill requires that any health care decision made by a proxy be based on the proxy's informed consent and on the decision that the proxy reasonably believes the inmate would have made under the circumstances. If there is no indication of what decision the inmate would have made, the bill allows the proxy to consider the inmate's best interest in deciding to withhold or withdraw treatment. The bill requires that a proxy's decision to withhold or withdraw life-prolonging procedures be supported by clear and convincing evidence that the decision would have been the one the inmate would have made had he or she been competent or, if there is no indication of what decision the inmate would have made, that the decision is in the inmate's best interest. (Section [18](#))

The bill authorizes relevant protected health information and mental health and medical records of an incapacitated inmate to be disclosed to a proxy appointed to make health care decisions for the inmate. (Section [18](#))

The bill authorizes a DOC employee to apply reasonable physical force upon an incapacitated inmate to administer medical treatment only by or under the clinical supervision of a physician, or his or her designee, and only to carry out a health care decision made in accordance with the provisions laid out above. (Section [18](#))

Additionally, under the bill, a DOC health care provider, ombudsman, or other employee who acts under the direction of a health care provider, is protected from criminal prosecution and civil liability and such individual may not be deemed to have engaged in unprofessional conduct as a result of carrying out a health care decision made on an inmate's behalf. (Section [18](#))

[Florida Commission on Offender Review](#)

The bill removes the requirement that the Governor and Cabinet consider applicants for membership on the Florida Commission on Offender Review (Commission) from a list compiled by a parole qualifications committee and instead allows the Governor and Cabinet to directly appoint commissioners at all times. (Section [19](#))

The bill removes a requirement that membership of the Commission include representation from minority persons. (Sections [19](#) and [20](#))

[Contract Requirements](#)

The bill authorizes DOC to exclude any or all of the following services from a contract for private correctional services and to retain responsibility for the delivery of those services, whenever DOC finds it is in the best interests of the state to do so:

- Dental.
- Medical.
- Psychological.
- Dietary. (Section [22](#))

The bill removes a requirement that any contract DOC enters into include substantial minority participation. (Section [22](#))

The bill provides that the provisions of law governing the participation of minority business enterprises no longer apply to correctional privatization. (Section [23](#))

The bill makes other technical and conforming changes. (Sections [14](#), [20](#), [21](#), and [24](#))

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2025. (Section [25](#))

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate negative fiscal impact on state government. DOC reports that the bill may have a minor impact on the department's technology needs to the extent that more tracking devices will be acquired to be used on inmates.¹ Additionally, the bill may have an indeterminate positive fiscal impact on state government to the extent that it will reduce the time and resources necessary to have separate hearings on involuntary treatment and may result in fewer lawsuits regarding emergency treatment and use of force.²

PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on contractor-operated correctional facilities to the extent that DOC retains control over and costs associated with the delivery of certain health and food services.³

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Prisoner Indigency Statute](#)

Section [57.085, F.S.](#), otherwise known as the Prisoner Indigency Statute, generally provides that a prisoner who is found indigent and unable to pay court costs and fees by a clerk of court may initiate a civil lawsuit⁴ without prepayment of such costs and fees.⁵ The amount owed in court costs and fees is placed as a lien against the prisoner's trust account by the Department of Corrections (DOC) or the local detention facility. The court costs and fees are then repaid in increments as funds become available in the prisoner's account to the clerk of court until the full amount of such costs and fees is paid.⁶

Before a prisoner may initiate a judicial proceeding, the court must review the prisoner's claim to determine if the claim is legally sufficient and if the court has jurisdiction and may grant relief. Additionally, the court must dismiss all or part of a prisoner's claim which:

- Fails to state a claim for which relief may be granted;
- Seeks monetary relief from a defendant who is immune from such relief;
- Seeks relief for mental or emotional injury where there has been no related allegation of a physical injury; or
- Is frivolous, malicious, or reasonably appears to be intended to harass one or more named defendants.⁷

In any judicial proceeding in which a certificate of indigence has been issued to a prisoner, the court may at any time dismiss the prisoner's action, in whole or in part, upon a finding that:

- The prisoner's claim of indigence is false or misleading;
- The prisoner provided false or misleading information regarding another judicial or administrative proceeding in which the prisoner was a party;
- The prisoner failed to pay court costs and fees despite having the ability to pay; or
- The prisoner's action or a portion of the action is frivolous or malicious.⁸

¹ DOC, Agency Analysis of 2025 HB 903, p. 7 (Mar. 11, 2025)(on file with the House Criminal Justice Subcommittee).

² *Id.*

³ DOC, *supra* note 1 at p. 6.

⁴ The lawsuits contemplated under this section are typically actions concerning prison conditions, many of which are routinely dismissed as legally frivolous. *Schmidt v. Crusoe*, 878 So. 2d 361, 365 (Fla. 2003).

⁵ S. [57.085\(2\) and \(3\), F.S.](#)

⁶ S. [57.085\(5\), F.S.](#)

⁷ S. [57.085\(6\), F.S.](#)

⁸ S. [57.085\(8\), F.S.](#)

In determining whether an action is frivolous or malicious, the court may consider whether:

- The prisoner's claim has no arguable basis in law or fact;
- The prisoner's claim reasonably appears intended solely to harass a party it is filed against;
- The prisoner's claim is substantially similar to a previous claim in that it involves the same parties or arises from the same operative facts as a previous claim;
- The prisoner's claim has little likelihood of success on its merits; or
- The allegations of fact in the prisoner's claim are fanciful or not credible.⁹

An indigent prisoner initiating a criminal proceeding or a collateral criminal proceeding is exempt from the lien requirement on his or her trust account.¹⁰

The Supreme Court of Florida has held that “a gain time challenge¹¹ is analogous to a collateral challenge to a sentence in a criminal proceeding because the end result is the same—the inmate’s time in prison is directly affected.”¹² Accordingly, the Court held that a “gain time challenge should be considered a ‘collateral criminal proceeding,’ and the Prisoner Indigency Statute should not apply.”¹³

Statutes of Limitations for Actions Filed by Prisoners

Under [s. 95.11\(6\), F.S.](#), a petition for extraordinary writ¹⁴ or any action related to the conditions of a prisoner’s confinement filed by or on behalf of an indigent prisoner¹⁵ must be commenced within one year.^{16, 17}

Additionally, under [s. 768.28\(14\), F.S.](#), every claim brought against the state or one of its agencies or subdivisions¹⁸ for damages for a negligent or wrongful act or omission must be commenced in the court of appropriate jurisdiction within four years after such claim accrues.¹⁹

In 2016, the Florida Supreme Court concluded that the term “conditions of the prisoner's confinement” in [s. 95.11\(5\)\(g\), F.S.](#), does not include a situation where a prisoner alleges that he or she suffered actual physical injury due to the negligent or wrongful act or omission of an employee of a government entity.²⁰ Accordingly, the Court held that where a prisoner files an action alleging that he or she suffered physical injury due to the negligent or wrongful acts or omissions of the employees of a government entity, the one-year statute of limitations period applicable to actions brought by a prisoner relating to the conditions of his or her confinement does not apply, rather, the four-year limitation period applicable to claims against the state for damages for a negligent or wrongful act applies.²¹

Federal Prison Litigation Reform Act

⁹ S. [57.085\(9\), F.S.](#)

¹⁰ S. [57.085\(10\), F.S.](#)

¹¹ Schmidt was disciplined for allegedly lying to prison staff and as a result DOC forfeited a portion of Schmidt’s gain-time that he had already earned as a reduction to his sentence. *Schmidt*, 878 So. 2d at 362.

¹² *Schmidt*, 878 So. 2d at 367.

¹³ *Id.*

¹⁴ Excluding a petition challenging a criminal conviction.

¹⁵ As defined in s. [57.085, F.S.](#)

¹⁶ S. [95.11\(6\)\(f\) and \(g\), F.S.](#)

¹⁷ The one-year statute of limitations does not apply to any court action challenging prisoner disciplinary proceedings conducted by DOC. Such an action must be commenced within 30 days after final disposition of the prisoner disciplinary proceedings through the administrative grievance process under ch. 33, F.S., Florida Administrative Code. S. [95.11\(6\)\(f\) and \(g\), F.S.](#), and s. [95.11\(9\), F.S.](#)

¹⁸ The phrase “state agencies or subdivisions” includes the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority. S. [768.28\(2\), F.S.](#)

¹⁹ Actions for contribution and actions for damages arising from medical malpractice or wrongful death are excluded from this four-year limitation. S. [768.28\(14\), F.S.](#)

²⁰ *Green v. Cottrell*, 204 So. 3d 22, 28 (Fla. 2016).

²¹ *Green*, 204 So. 3d at 22.

Exhaustion of Administrative Remedies

Under the Prison Litigation Reform Act (PLRA),²² a prisoner confined in any jail, prison, or other correctional facility is barred from bringing an action relating to prison conditions under [42 U.S.C. § 1983](#), relating to a federal civil action for deprivation of rights, or any other federal law, until he or she exhausts all available administrative remedies, including those that do not meet federal standards.²³ Further, the Florida Supreme Court has noted that “in cases where state prisoners raise federal law claims, it is the correctional facility’s grievance process that must be exhausted.”²⁴

Required Showing of a Physical Injury or the Commission of a Sexual Act

The PLRA also prohibits a prison from bringing a 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.²⁵

The term “sexual act” means:

- Contact between the penis and the vulva or the penis and the anus; 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.²⁶

“10-20-Life”

Section [775.087\(2\), F.S.](#), commonly known as “10-20-Life,” requires a court to sentence a person who possessed or discharged a firearm²⁷ or destructive device²⁸ during the commission of an enumerated offense to a mandatory minimum term of imprisonment as follows:

- If a person was in actual possession of a firearm or destructive device during the commission of an enumerated offense, a minimum term of imprisonment of 10 years.
- If the person discharged a firearm or destructive device during the commission of an enumerated offense, a minimum term of imprisonment of 20 years.
- If the person discharged a firearm or destructive device which resulted in death or great bodily harm to any person, a minimum term of imprisonment of 25 years, with a maximum term of imprisonment of life in prison.²⁹

²² 42 U.S.C. § 1997e.

²³ *Id.*; *Green*, 204 So. 3d at 29.

²⁴ *Id.*

²⁵ 42 U.S.C. § 1997e(e).

²⁶ 18 U.S.C. § 2246(2).

²⁷ “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime. S. [790.001\(6\), F.S.](#)

²⁸ “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. S. [790.001\(4\), F.S.](#)

²⁹ S. [775.087\(2\)\(a\), F.S.](#)

Section [775.087\(3\), F.S.](#), requires the court to sentence a person who possessed or discharged a semiautomatic firearm and its high-capacity detachable box magazine (semiautomatic firearm) or a machine gun³⁰ during the commission of an enumerated offense to a mandatory minimum term of imprisonment as follows:

- If a person was in actual possession of a semiautomatic firearm or machine gun during the commission of an enumerated offense, a minimum term of imprisonment of 15 years.
- If the person discharged a semiautomatic firearm or machine gun during the commission of an enumerated offense, a minimum term of imprisonment of 20 years.
- If the person discharged a semiautomatic firearm or machine gun which resulted in death or great bodily harm to any person, a minimum term of imprisonment for 25 years, with a maximum term of imprisonment of life in prison.³¹

The court must impose any such mandatory minimum term of imprisonment consecutively to any other term of imprisonment imposed for any other felony offense.³²

The enumerated offenses that make a person eligible for the mandatory minimum terms of imprisonment under [s. 775.087, F.S.](#), include:

- Murder;
- Sexual battery;
- Robbery;
- Burglary;
- Arson;
- Aggravated battery;
- Kidnapping;
- Escape;
- Aircraft piracy;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Trafficking in controlled substances;
- Possession of a firearm by a felon; or
- Human trafficking.

Execution of Death Sentence

A death sentence must be executed by electrocution or lethal injection; lethal injection is the default method unless a person sentenced to death affirmatively elects execution by electrocution.³³ The warden of the state prison shall designate the executioner and the warrant authorizing the execution shall be read to the convicted person immediately before execution.³⁴

If electrocution or lethal injection is held to be unconstitutional by the Florida Supreme Court under the State Constitution, or held to be unconstitutional by the United States Supreme Court under the United States Constitution, or if the United States Supreme Court declines to review any judgment holding a method of execution to be unconstitutional under the United States Constitution made by the Florida Supreme Court or the United States Court of Appeals that has jurisdiction over Florida, all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution.³⁵

³⁰ “Machine gun” means any firearm which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger. S. [790.001\(9\), F.S.](#)

³¹ S. [775.087\(2\)\(a\), F.S.](#)

³² S. [775.087\(2\)\(d\), F.S.](#)

³³ S. [922.10, F.S.](#), and s. [922.105\(1\), F.S.](#)

³⁴ S. [922.10, F.S.](#)

³⁵ S. [922.105\(3\), F.S.](#)

Installation or Use of a Tracking Device or Application

A person commits a third-degree felony³⁶ if he or she knowingly installs or places a tracking device³⁷ or tracking application³⁸ on another person's property without that person's consent, or uses 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.³⁹

The prohibition does not apply to:

- A law enforcement officer,⁴⁰ 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;
- A parent or legal guardian of a minor child who installs, places, or uses a tracking device or tracking application on the minor child's property if certain conditions are met;
- A caregiver of an elderly person or disabled adult if certain conditions are met;
- A person acting in good faith on behalf of a business entity for a legitimate business purpose, except for persons engaged in private investigation;⁴¹ or
- An owner or lessee of a motor vehicle that installs, places, or uses, or directs the installation, placement, or use of, a tracking device or tracking application on such vehicle during the period of ownership or lease if certain requirements are met.⁴²

Corrections Mental Health Act

The Corrections Mental Health Act⁴³ outlines the processes for evaluating and providing appropriate treatment for mentally ill inmates in the custody of DOC. DOC must provide appropriate treatment or care to inmates who have mental illnesses that require hospitalization and intensive psychiatric inpatient treatment or care in DOC mental health treatment facilities designated for that purpose and provide further mental health services as necessary to inmates committed to DOC.⁴⁴ 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.⁴⁵ Additionally, DOC is authorized to contract with entities, persons, or agencies qualified to provide such

³⁶ A third-degree felony is punishable by up to five years' imprisonment and a \$5,000 fine. Ss. [775.082](#), [775.083](#), or [775.084](#), F.S.

³⁷ "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. S. [934.425\(1\)\(c\)](#), F.S.

³⁸ "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. S. [934.425\(1\)\(b\)](#), F.S.

³⁹ S. [934.425\(2\)](#), F.S.

⁴⁰ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. [354.01](#), F.S. S. [943.10\(1\)](#), F.S.

⁴¹ "Private investigation" means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters: crime or wrong done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for such investigation; to identify habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or groups of persons; the credibility of witnesses or other persons; the whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; or the business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof. S. [493.6101\(17\)](#), F.S.

⁴² S. [934.425\(4\)\(a-e\)](#), F.S.

⁴³ Ss. [945.40-945.49](#), F.S.

⁴⁴ S. [945.41\(1\)](#), F.S.

⁴⁵ S. [945.41\(2\)](#), F.S.

services.⁴⁶ DOC is required to work in conjunction with the Mental Health Program Office of the Department of Children and Families to adopt rules necessary to administer the Corrections Mental Health Act.⁴⁷

Involuntary Placement for Treatment

An inmate may be placed in a mental health treatment facility if he or she is mentally ill⁴⁸ and in need of care and treatment.⁴⁹

“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; and
- 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.⁵⁰

An inmate may be placed in a mental health treatment facility after notice and hearing, upon the recommendation of the warden of the facility where the inmate is confined. The recommendation must be entered on a petition and must be supported by the expert opinion of a psychiatrist and the second opinion of a psychiatrist or psychological professional. The petition must be filed with the court in the county where the inmate is located.⁵¹ A hearing on the petition must be held within five days.⁵²

If the court finds that the inmate is not mentally ill, the court must dismiss the petition for placement.⁵³ If, however, 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 or, if the inmate is at a mental health treatment facility, that he or she be retained there. The court must authorize the mental health treatment facility to retain the inmate for up to six months.

If, at the end of that time, continued placement is necessary, the warden must apply to the Division of Administrative Hearings (DOAH) for an order authorizing continued placement.⁵⁴ If the administrative law judge (ALJ) presiding over the DOAH hearing finds that the inmate no longer meets the criteria for placement, he or she must order that the inmate be transferred out of the mental health treatment facility.⁵⁵ If, however, the inmate waives the hearing or the ALJ finds that the inmate is in need of continued placement, the ALJ must enter an order

⁴⁶ S. [945.41\(1\), F.S.](#)

⁴⁷ S. [945.49\(2\), F.S.](#)

⁴⁸ “Mentally ill” means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. However, for the purposes of transferring an inmate to a mental health treatment facility, the term does not include a developmental disability as defined in s. [393.063, 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. S. [945.42\(9\), F.S.](#); “Developmental disability” means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. S. [393.063\(11\), F.S.](#)

⁴⁹ S. [945.43\(1\), F.S.](#)

⁵⁰ S. [945.42\(6\), F.S.](#)

⁵¹ S. [945.43\(2\)\(a\), F.S.](#)

⁵² S. [945.43\(3\)\(a\), F.S.](#)

⁵³ S. [945.43\(3\)\(b\), F.S.](#)

⁵⁴ S. [945.43\(2\)\(e\), F.S.](#) and s. [945.45, F.S.](#)

⁵⁵ S. [945.45\(3\)\(d\), F.S.](#)

authorizing continued placement for a period not to exceed one year. This procedure must be repeated prior to the expiration of each additional one-year continued placement period.⁵⁶

Emergency Placement for Treatment

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.⁵⁷

“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; and
- 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.⁵⁸

If treatment cannot be provided for the inmate at the institution where he or she is confined, he or she may be placed in a mental health treatment facility on an emergency basis. Upon such emergency placement, the inmate must be evaluated and if he or she is determined to be in need of treatment and care, the warden must initiate proceedings for involuntary placement of the inmate.⁵⁹

Involuntary Placement of an Inmate Scheduled for Release

If an inmate who is receiving mental health treatment through DOC is scheduled for release but continues to be mentally ill and in need of care and treatment the warden is authorized to initiate Baker Act⁶⁰ procedures for involuntary placement or involuntary treatment under part I of ch. 394, F.S., 60 days prior to release.⁶¹

Discharge of an Inmate from Treatment

An inmate who has been transferred for the purpose of mental health treatment must be discharged from treatment by the warden under the following conditions:

- If 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 and treatment as an inpatient, the inmate may be released with a recommendation for outpatient treatment.⁶²

Rights of Inmates Receiving Treatment

⁵⁶ S. [945.45\(3\)\(e\), F.S.](#)

⁵⁷ S. [945.44\(1\), F.S.](#)

⁵⁸ S. [945.42\(5\), F.S.](#)

⁵⁹ S. [945.44\(2\), F.S.](#)

⁶⁰ The Florida Mental Health Act, commonly referred to as the Baker Act, includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida. S. [394.459, F.S.](#)

⁶¹ S. [945.46\(1\), F.S.](#)

⁶² S. [945.47\(1\), F.S.](#)

Any inmate provided with mental health treatment has certain rights under the Corrections Mental Health Act, including the right to quality treatment and express and informed consent.⁶³

Any inmate provided psychiatric treatment within DOC must be asked to give his or her express and informed written consent for such treatment. "Express and informed written consent" or "consent" means consent voluntarily given in writing after a conscientious and sufficient explanation and disclosure of the:

- Purpose of the proposed treatment.
- Common side effects of the treatment, if any.
- Expected duration of the treatment.
- Alternative treatment available.⁶⁴

The explanation must 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.⁶⁵

Involuntary Treatment

Involuntary mental health treatment of an inmate who refuses treatment that is deemed to be necessary for the appropriate care of the inmate and the safety of the inmate or others may be provided at a mental health treatment facility. The warden of the institution containing the mental health treatment facility must petition the circuit court serving the county in which the mental health treatment facility is located for an order authorizing the treatment of the inmate.⁶⁶ A hearing on the petition must be held within five days after the petition is filed.⁶⁷

At the hearing, the court must determine by clear and convincing evidence whether:

- The inmate is mentally ill.
- Such treatment is essential to the care of the inmate.
- The treatment is experimental or presents an unreasonable risk of serious, hazardous, or irreversible side effects.⁶⁸

Additionally, the court must consider the:

- Inmate's expressed preference regarding treatment.
- Probability of adverse side effects.
- Prognosis for the inmate without treatment.
- Prognosis for the inmate with treatment.⁶⁹

An order authorizing involuntary treatment must allow such treatment for a period not to exceed 90 days following the date of the order. Unless the court is notified in writing that the inmate has provided express and informed consent in writing, that the inmate has been transferred to another institution of DOC, or that the inmate is no longer in need of treatment, the warden must, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure must be repeated until the inmate provides express and informed consent or is no longer in need of treatment. Treatment may be continued pending a hearing after the timely filing of any petition.⁷⁰

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

⁶³ S. [945.48\(1\) and \(2\), F.S.](#)

⁶⁴ S. [945.48\(2\), F.S.](#)

⁶⁵ *Id.*

⁶⁶ S. [945.48\(3\), F.S.](#)

⁶⁷ S. [945.48\(4\)\(a\), F.S.](#)

⁶⁸ S. [945.48\(4\)\(b\), F.S.](#)

⁶⁹ *Id.*

⁷⁰ S. [945.48\(4\)\(c\), F.S.](#)

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.⁷¹

Additionally, when the consent of the 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 non-psychiatric medical treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.⁷²

Advance Health Care Directives

Competent adults may formulate, in advance, preferences regarding health care treatment in the event that injury or illness causes severe impairment or loss of decision-making capacity, known as an advance directive. An advance directive is a witnessed, oral statement or written instruction that expresses a person's desires about any aspect of his or her future health care or health information, including the designation of a health care surrogate, a living will, or an anatomical gift.⁷³

Health Care Surrogates and Proxies

A health care surrogate is a competent adult who has been expressly designated by a principal via an advance directive to make health care decisions and to receive health care information on behalf of the principal upon the principal's incapacity or at another point in time as determined by the principal.⁷⁴ A health care surrogate's authority to make health care decisions includes all of the following:

- Make all health care decisions for the principal during the principal's incapacity;
- Consult expeditiously with appropriate health care providers to provide informed consent, including written consent where required, provided that such consent reflects the principal's wishes or the principal's best interests;
- Refuse or withdraw consent for any health care, including life prolonging procedures and mental health treatment unless otherwise stated in the advance directives;⁷⁵
- Have access to the appropriate medical records of the principal;
- Apply for public benefits for the principal and have access to information regarding the principal's income, assets, and financial records to the extent required to make such application;
- Authorize the release of information and medical records to appropriate persons to ensure continuity of the principal's health care; and
- Authorize the admission, discharge, or transfer of the principal to or from a health care facility.⁷⁶

If a person fails to designate a surrogate or a designated surrogate is unwilling or unable to perform his or her duties, a health care facility can appoint a proxy to make health care decisions on behalf of such person should that person become incapacitated.⁷⁷ Current law directs health care facilities to appoint proxies according to a prioritized list based on the relationship to the patient. The following persons may serve as proxy to an incapacitated patient, in order of priority:

- A court-appointed guardian with health care decision-making authority;
- The patient's spouse;
- An adult child of the patient;
- A parent of the patient;
- An adult sibling of the patient;
- An adult relative of the patient having shown special care and concern for the patient;
- A close friend of the patient; or

⁷¹ S. [945.48\(5\), F.S.](#)

⁷² S. [945.48\(6\), F.S.](#)

⁷³ S. [765.101\(1\), F.S.](#)

⁷⁴ S. [765.101\(21\), F.S.](#) and s. [765.202, F.S.](#)

⁷⁵ S. [765.305\(1\), F.S.](#)

⁷⁶ S. [765.202\(1\), F.S.](#)

⁷⁷ S. [765.401\(1\), F.S.](#)

- A clinical social worker, under special circumstances.⁷⁸

Florida Commission on Offender Review

The members of the Florida Commission on Offender Review⁷⁹ (Commission) are appointed by the Governor and Cabinet from a list of eligible applicants submitted by a parole qualifications committee.⁸⁰ Such appointments are then certified to the Senate by the Governor and Cabinet for confirmation. Among other requirements, membership of the Commission is required to include representation from minority persons.^{81, 82}

The parole qualifications committee's duties include:

- Advertising Commission positions statewide.
- Receiving applications for any position or positions on the Commission.
- Devising a plan for the determination of the qualifications of the applicants by investigations and comprehensive evaluations, including, but not limited to, investigation and evaluation of the character, habits, and philosophy of each applicant.⁸³

Upon receiving a list of eligible persons from the parole qualifications committee, the Governor and Cabinet may reject the list. If the list is rejected, the committee restarts the application and examination procedure.⁸⁴

If the Legislature decreases the membership of the Commission, all terms of office automatically expire. Under such circumstances, the Governor and Cabinet are required to expedite the appointment of commissioners.

Notwithstanding the parole qualifications committee procedure, members are directly appointed by the Governor and Cabinet and may be selected from incumbents; however, membership must still include representation from minority persons. Members are then certified to the Senate by the Governor and Cabinet for confirmation.⁸⁵

Contract Requirements

A contract entered into for the operation of contractor-operated correctional facilities is required to maximize the cost savings of such facilities and is mandated to 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 DOC in comparable facilities. The work and education programs must be designed to reduce recidivism, and include opportunities to participate in such work programs as authorized pursuant to [s. 946.523, F.S.](#)⁸⁶

Each contract entered into by DOC must include substantial minority participation unless demonstrated by evidence, after a good faith effort, as impractical.⁸⁷

⁷⁸ *Id.*

⁷⁹ The Commission operates as a quasi-judicial and decision-making body that is responsible for the selection of candidates who are appropriate for parole. Office of Program Policy Analysis and Government Accountability, *Florida Commission on Offender Review*, oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1033 (last visited Mar. 23, 2025).

⁸⁰ S. [947.02\(1\), F.S.](#)

⁸¹ *Id.*

⁸² "Minority person" means a lawful, permanent resident of Florida who is: an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; 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; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; 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 an American woman. S. [288.703\(4\), F.S.](#)

⁸³ S. [947.02\(2\), F.S.](#)

⁸⁴ S. [947.02\(4\), F.S.](#)

⁸⁵ S. [947.021, F.S.](#)

⁸⁶ S. [957.04\(1\), F.S.](#)

⁸⁷ S. [957.04\(5\), F.S.](#)