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 Children, Families, and Elder Affairs Committee

BILL:	SB 2018
INTRODUCER:	Senator Fasano
SUBJECT:	Mental Health/Crime Reduction
DATE:	April 2, 2009
REVISED:	04/06/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Walsh	CF	**Fav/1 amendment**
2.			CJ	
3.			HR	
4.			HA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☒	Significant amendments were recommended

I. Summary:

Senate Bill 2018 is based on a plan developed by a statewide task force, convened by the Supreme Court of Florida and consisting of representatives from all three branches of government and leaders from the mental health, substance abuse, and criminal justice fields. It creates the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act (the Act) which establishes a new community mental health and substance abuse forensic treatment system to serve individuals who have mental illnesses or co-occurring mental illnesses and substance use disorders and who are in or at risk of entering state forensic mental health treatment facilities, prisons, jails, juvenile justice centers, or state civil mental health treatment facilities.

The bill requires the Agency for Health Care Administration (AHCA or the agency) and the Department of Children and Families (DCF or the department) to develop and implement the system which must build on local community diversion and reentry initiatives and strategies. The system must include a comprehensive continuum of care and services that uses evidence-based and best practices to address co-occurring mental health and substance use disorders. The department and the agency are also required to coordinate and consult with:

- The Criminal Justice, Mental Health, and Substance Abuse Policy Council;
- Certain counties receiving reinvestment grants and implementing the Act;
- Certain county public safety coordinating councils; and
- The Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center, located at the Florida Mental Health Institute at the University of South Florida.

This legislation also authorizes AHCA to seek federal approval of a new home and community-based services program in the Medicaid state plan, and allows the program to be limited with regard to the number of individuals participating and by geographic area. Additionally, the legislation authorizes the Agency to disenroll those eligible for this new program from MediPass or Managed Care enrollment.

The bill also specifies some new procedures for defendants who are adjudicated incompetent to proceed or not guilty by reason of insanity, establishes new criteria for forensic evaluator training and creates a forensic evaluator registry.

This bill substantially amends ss. 394.655, 394.656, 394.657, 394.659, 409.906, 409.912, 916.107, 916.111, 916.115, 916.13, 916.15, 916.17 and 985.19 and creates s. 394.9086 of the Florida Statutes.

II. Present Situation:

Forensic Mental Health

On any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses or substance use disorders requiring immediate treatment are arrested and booked into Florida jails. Of the 150,000 children and adolescents who are referred to Florida's Department of Juvenile Justice (DJJ) every year, over 70 percent have at least one mental health disorder.[1]

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17,000 individuals. In the next nine years, this number is projected to reach more than 32,000 individuals, with an average annual increase of 1,700 individuals. A population this size is enough to fill more than 20 correctional institutions, or the equivalent of one new prison added every year.[2]

Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system. Over the past nine years, forensic commitments have increased from 863 to 1,549 admissions annually. At this rate, commitments are projected to reach nearly 2,800 by 2016.[3]

People with serious mental illnesses or substance use disorders who come in contact with the criminal justice system are typically poor, uninsured, homeless, members of minority groups,

[1] DCF, *Staff Analysis and Economic Impact, Senate Bill Number 2018* (March 2, 2009).
[2] *Id.*
[3] *Id.*

and experiencing co-occurring mental health and substance use disorders. The majority of these individuals are charged with minor misdemeanor and low-level felony offenses that are a direct result of untreated psychiatric conditions.[4]

Due in large part to inadequate community-based treatment capacity and infrastructure, individuals with mental illnesses or substance use disorders who become involved in the justice system are at increased risk of subsequent recidivism to the justice system. As many as half of individuals with mental illnesses and/or substance use disorders who recidivate to the justice system are charged, not with committing new offenses, but for violating conditions of probation or parole, such as failing to report to treatment or to maintain stable housing or employment.[5]

Consequences of the current system include:

- Substantial and disproportionate cost shifts from less expensive, front-end services provided in the community to much more expensive, back-end services provided in the juvenile justice, criminal justice, and forensic mental health settings;
- Compromised public safety;
- Increased arrest, incarceration, and criminalization of people with mental illnesses;
- Increased police injuries; and
- Increased rates of chronic homelessness.[6]

Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program
The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program (the Grant Program) was established by the Legislature in 2007 for the purpose of providing funding to counties to allow them to plan, implement, or expand initiatives to address issues related to forensic mental health.[7] The statute provides that the initiatives must increase public safety, avert increased spending on criminal justice, and improve the accessibility and effectiveness of treatment services for adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders and who are in, or at risk of entering, the criminal or juvenile justice systems.[8]

The Grant Program makes two types of grants available:

- One-year planning grants with a maximum grant award of $100,000; and
- Three-year implementation or expansion grants with a maximum grant award of $1,000,000.[9]

In order to be eligible to receive a grant, a county must have a county planning council or committee.[10] In addition, county recipients of grant funding legislation must provide matching funds or in-kind resources.[11]

[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Section 394.656, F.S.
[8] *Id.*
[9] Section 394.658(1), F.S.

The legislation establishing the Grant Program required the Florida Substance Abuse and Mental Health Corporation (SAMH)[12] to establish a statewide grant review committee, and also created the following supportive entities:

- Criminal Justice, Mental Health and Substance Abuse Technical Assistance Center at the Florida Mental Health Institute, University of South Florida (the Technical Center);[13] and
- Criminal Justice, Mental Health and Substance Abuse Policy Council (the Council) within SAMH.[14]

The Technical Center is charged with providing technical assistance to counties for the preparation and implementation of grants. In addition, the Technical Center acts as a clearinghouse for information and resources related to criminal justice, juvenile justice, mental health and substance abuse.[15]

The Council is directed to align policy initiatives in the criminal justice, juvenile justice, and mental health systems to ensure the most effective use of resources and to coordinate the development of legislation relating to various mental health needs. The Council is further directed to work with county grantees to ensure that effective strategies are disseminated statewide.[16]

Medicaid for Forensic Clients

Currently, there are no acts or waivers requiring a community forensic treatment system. Under the current Medicaid state plan, Medicaid eligible individuals who have mental illnesses or co-occurring mental illnesses and substance use disorders, and who are involved in or at risk of entering the criminal justice or state forensic mental health system may receive the following services after they return to the community:

- Intensive case management;
- Medically supervised non-residential day treatment;
- Therapy with a licensed clinician;
- Crisis intervention;
- Mental health and substance abuse assessments;
- Treatment plan development and review;
- Medical and psychiatric services;
- Behavioral health therapy; and

[10] Section 394.656(3)(b), F.S. Pursuant to s. 394.657, F.S., each board of county commissioners must designate the county public safety coordinating council (s. 951.26, F.S.) or another criminal or juvenile justice mental health and substance abuse council or committee to be the planning council for the Grant Program.
[11] Section 394.658(2), F.S.
[12] The SAMH is a non-profit corporation created by the Legislature to oversee the state's publicly funded substance abuse and mental health services. The Governor, President of the Senate and Speaker of the House appoint its 12 directors. Section 394.655, F.S.
[13] Section 394.659, F.S.
[14] Section 394.655(11), F.S.
[15] Section 394.659, F.S.
[16] Section 394.655(11), F.S.

- Community support and rehabilitation services.[17]

Whether these services are tailored to recipients who have been involved in the criminal justice system depends on the particular curriculum and policies of the individual providers throughout the state.

Community forensic treatment services for which Medicaid cannot reimburse under federal rules include competency restoration services for recipients in county jails, DOC custody, and state mental health facilities. Individuals who are adjudicated as incompetent to proceed may be placed in community treatment facilities with designated forensic beds. Funding, monitoring of individuals, and bed availability is managed and controlled through the department.

Currently, community behavioral health services are available statewide to all Medicaid recipients residing in the community. Providers of community behavioral health services for Medicaid recipients who are involved in the criminal justice system but who reside in the community are currently reimbursed through a prepaid mental health plan or managed care organization in the area where the recipient resides.[18]

Psychotherapeutic Medication for Forensic Clients
Chapter 916, F.S., also called the "Forensic Client Services Act," addresses the treatment and training of individuals who have been charged with felonies and found to be incompetent to proceed to trial due to mental illness, mental retardation or autism, or acquitted by reason of insanity.

Chapter 916, F.S., does not allow for psychotherapeutic medication treatment[19] to be administered to a forensic client upon admission to a forensic facility, unless express and informed consent is provided by the individual or a court appointed guardian for the individual. A court order to medicate must be obtained to administer psychotherapeutic medication in the absence of express and informed consent, or emergency treatment must be ordered by a physician if an individual is at imminent risk of significantly hurting himself, herself or others.[20]

Abrupt termination of psychotherapeutic medication while awaiting a court order to treat an individual can cause an acute exacerbation of mental illness, as well as discomfort during medication withdrawal.

Forensic Evaluator Training

Evaluation of an Incompetent to Proceed Adult

[17] AHCA, *2009 Bill Analysis & Economic Impact Statement, SB 2018*.
[18] *Id.*
[19] Psychotropic medications are drugs prescribed to stabilize or improve mood, mental status or behavior. Psychotropic medications include antidepressants (*e.g.*, Paxil, Zoloft), antianxiety medications (*e.g.*, Klonapin, Ativan), mood stabilizers (*e.g.*, Tegretol, Depakote) and antipsychotic (or neuroleptic) drugs (*e.g.*, Haldol, Risperdal). *See* Dep't. Health and Human Serv., Nat'l Inst. Of Mental Health, *Medications* (2007).
[20] Section 916.107(3), F.S.

Section 916.115, F.S., requires the court to appoint no more than three experts to evaluate the mental condition of a defendant in a criminal case,[21] with respect to competency to proceed, insanity, involuntary placement and treatment.[22] An appointed expert must be a psychiatrist, psychologist or physician, and, "to the extent possible," must have completed forensic evaluator training approved by the department.[23] The department is required to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.[24] In addition, the department is required to provide a plan for training evaluators to perform forensic evaluations and to standardize the criteria and procedures to be used in these evaluations. [25]

The statute does not require forensic evaluators to be re-certified and, according to the department, the lack of recertification requirements has resulted in uneven quality of evaluations across the state.[26]

Evaluation of an Incompetent to Proceed Juvenile
At any time prior to or during a juvenile delinquency case, if the court has reason to believe that the juvenile may be incompetent to proceed, the court must stay all proceedings and order an evaluation of the juvenile's mental condition.[27] All determinations of competency are made at a hearing, with findings of fact based on an evaluation of the child's mental condition, as determined by two or three experts appointed by the court.[28] The statute does not specify the educational qualifications of court-appointed experts.

The court-appointed expert is required to address specific issues in his or her evaluation and report.[29] Sometimes, however, evaluations fail to address the specified issues, and the failure makes it difficult for the department to determine the appropriateness of a juvenile's placement.[30]

Neither the department, the Department of Juvenile Justice, the Agency for Persons with Disabilities, nor the juvenile's attorney has standing to challenge the evaluations by the court-appointed experts prior to time of commitment.[31]

Time Frames for Transporting Forensic Clients
A defendant who is found incompetent to proceed or not guilty by reason of insanity, and who meets the criteria for involuntary commitment, may be committed to the department for treatment. When the defendant regains competency or no longer meets commitment criteria, the

[21] Section 916.301, F.S., prescribes the appointment of experts in a case where the defendant is suspected of being retarded or autistic.
[22] Section 916.115(1), F.S
[23] Section 916.115(1)(a), F.S
[24] Section 916.115(1)(b), F.S
[25] Section 916.111, F.S.
[26] DCF, *supra* note 1.
[27] Section 985.19(1), F.S.
[28] Section 985.19(b), F.S.
[29] Section 985.19(1)(f), F.S. See also, Rule 8.095, Rules of Juvenile procedure.
[30] DCF, *supra* note 1.
[31] *Id.*

mental health treatment facility at which the defendant has been retained must file a report with the court.[32]

Although the Rules of Criminal Procedure provide that the court must hold a hearing to address the issues raised in the report within 30 days of receipt, [33] the statute does not expressly require that the court hold a hearing, nor does it impose on the court a time frame for addressing the report. Similarly, the statute does not specify when the defendant must be transported back to the jail to await the hearing. According to the department's data from July 2007 through February 2008, 46 percent of competent defendants were transported for hearing after 16 or more days.[34]

III. Effect of Proposed Changes:

Community Mental Health and Substance Abuse Treatment and Crime Reduction Act (Sections 1, 2, 3, 4, 5, 6, 7 and 13 of SB 2018)

This bill creates the Community Mental Health and Substance Abuse Crime Reduction Act (the Act) in s. 394.9086, F.S. The Act includes legislative intent and seven specific goals for the new program. Goals include the following:

- Ensure public safety;
- Ensure that forensic competency restoration services are provided in the least restrictive, least costly, and most effective environment;
- Provide competency-restoration services in the community when appropriate, based on consideration of public safety, the needs of the individual and available resources;
- Reduce admissions for competency restoration to state forensic mental health treatment facilities;
- Reduce rates of arrest, incarceration, and re-incarceration for persons in the program;
- Increase outreach and services to individuals at risk of criminal justice system, juvenile justice system and forensic mental health system involvement; and
- Support collaboration among local law enforcement, judicial, and correctional stakeholders implementing diversion and problem-solving strategies that will reduce the demand for forensic mental health placement.

The bill defines the following terms, *inter alia*:

- Best practices;
- Community forensic system;
- Evidence-based practices; and
- Forensic Intensive Care Management.

The bill requires DCF, in consultation with AHCA, to develop and implement a community mental health and substance abuse forensic treatment system ("community forensic system") that builds on local community diversion and reentry initiatives and strategies. The bill provides the following examples of community forensic system initiatives and strategies:

[32] Sections 916.13 and 916.15, F.S.
[33] Rule 3.212(c)(6), Florida Rules of Criminal Procedure.
[34] DCF, *supra* note 1.

- Mental health courts;
- Diversion programs;
- Alternative prosecution and sentencing techniques;
- Crisis intervention teams;
- Specialized training for criminal justice, juvenile justice, and treatment service professionals;
- Specialized probation officers at the state and county levels to serve individuals under
- correctional control in the community;
- Collateral services such as supported, transitional, and permanent housing, and supported
- employment; and
- Reentry services and supports for affected individuals.

The bill dictates that the community forensic system **must include**, at a minimum, the following services and elements:

- Competency-restoration and treatment services provided in a variety of settings from least restrictive to progressively more restrictive settings;
- Forensic intensive care management;
- Supported housing;
- Supported employment;
- Medication management;
- Trauma-specific services;
- Residential services;
- Treatment for co-occurring mental health and substance abuse disorders; and
- Outreach and education.

The following categories of individuals are eligible for community forensic system service:

- Adults who are adjudicated incompetent to proceed or not guilty by reason of insanity, whose current most serious charge is a felony of the third degree or a felony of the second degree if the felony did not involve violence, and who meet public safety criteria established by the court and treatability criteria established by the department for placement in a community setting;
- Adults who experience serious and persistent mental illnesses re-entering the community from state prisons;
- Adults who have been committed to a state forensic mental health treatment facility after being adjudicated incompetent to proceed or not guilty by reason of insanity, and are released or are pending release to the community by the court after completing competency restoration services or being found to no longer meet the criteria for continued commitment placement;
- Adults who experience serious and persistent mental illnesses, who have a history of involvement in the justice system, or who are at risk of entering or are already involved with the criminal justice system; and
- Children deemed incompetent to proceed under s. 985.19, F.S.

The bill directs DCF to develop a "continuum of services" to implement the Act, specifically directing the department to:

- Define requirements for all providers in the community forensic system;
- Select demonstration sites which demonstrate active and sustained participation in community collaborations;
- Enter into memorandums of agreement with county planning councils or committees;
- Indentify providers to implement the continuum of services, in consultation with county planning councils or committees;
- Establish performance measures and reporting requirements for providers, including, at a minimum:
    - The number of individuals diverted from state forensic mental health treatment facilities;
    - The number of individuals diverted from the criminal justice system;
    - The rates of arrest, incarceration, and re-incarceration for new criminal offenses;
    - The rates of employment; and
    - The annual number of days in a crisis stabilization unit, detoxification facility, short-term residential treatment program, state civil mental health treatment facility, or state forensic mental health treatment facility; and
- Monitor contracts.

The bill provides that in expectation of statewide implementation, DCF and AHCA "may identify geographic areas of the state for initial implementation." The areas must be selected based on findings of community readiness and the potential for affecting the greatest number of individuals. Selection criteria may include:

- Community readiness;
- High bed-utilization rate; and
- Successful application for implementation grant funding under the Grant Program.

In the demonstration areas established by the Act, the bill requires the court to place individuals who otherwise meet the criteria for involuntary commitment but whose most serious charge is a third degree or second degree non-violent felony in a community residential facility for competency restoration, unless bed space or funding is unavailable or the court makes a finding that the individual cannot be safely placed in the community.

The bill adds to the duties of **the Council**, requiring it to provide consultation in the development of comprehensive and cost-effective community-based mental health and substance abuse treatment services for forensic populations. The bill requires the Council to appoint an advisory committee to review and monitor the implementation of the Act.

The bill requires DCF and ACHA to work in coordination with counties that received grants under **the Grant Program**, to develop local treatment and service delivery infrastructures. The bill also amends the duties of the planning councils to include consulting with local governing bodies when planning or implementing the Act.

The bill requires **the Technical Center** to coordinate with DCF to develop minimum competencies and proficiencies for communities and providers, and to identify evidenced-based and best practices. The Technical Center is also directed to prepare an annual report regarding the implementation of the Act.

The bill provides that, subject to specific appropriation, AHCA may seek federal approval for a **Medicaid state plan amendment**, pursuant to s. 1915i of the Social Security Act,[35] that will allow the provision of home and community-based services to individuals with mental illness who have disabilities that cause them to become, or put them at risk of becoming, involved with the criminal justice system. The bill provides that the services may be limited to a select number of eligible individuals (no more than 1,000) in select geographic areas and, after July 1,2012, behavioral health services may be capitated. The bill states that AHCA must receive approval from the Legislature or the Legislative Budget Commission for any funding beyond that which is provided within "initial implementation revenues."

The bill amends s 409.912, F.S., to exempt individuals who have serious and persistent mental illnesses, who are receiving services under the Act, and who are eligible for and receiving services under the state plan, from MediPass[36] and managed care plans authorized under ch. 409, F.S. (Florida's Social and Economic Assistance chapter).

Psychotherapeutic Medication for Forensic Clients (Section 8 of SB 2018)
Section 916.107, F.S., delineates the rights of forensic clients. The bill amends s. 916.107(3), F.S., to provide that for a client who has been receiving psychotherapeutic medication at a jail at the time of transfer to a state forensic mental health treatment facility and who lacks the capacity to make an informed decision regarding mental health treatment, the admitting physician may order a continuation of psychotherapeutic mediation if, in the physician's judgment, abrupt cessation of the medication could cause a risk to the health and safety of the client during the time a court order to medicate is pursued.

Forensic Evaluator Training (Sections 9, 10, and 14 of SB 2018)
The bill requires that a forensic evaluator training course approved by the department be provided at least annually. The bill requires the department to maintain and provide the courts with a "forensic evaluator registry" (rather than a "list") of available professionals who have completed the approved training. Beginning July 1, 2010, a mental health professional shall remain on the registry only if he or she has completed or retaken the required training within the

[35] Under s. 1915i of the Social Security Act, states have the option to amend their state plans to provide home and community-based services without regard to statewideness or other Medicaid requirements. For additional details on s. 1915i, see Dep't of Health and Human Services, Centers for Medicare and Medicaid Services, SMDL#08-001, available at http://www.cms.hhs.gov/SMDL/downloads/SMD040408.pdf (last visited April 1, 2009).

[36] The Medicaid Provider Access System (MediPass) is a primary care case management program for Medicaid recipients developed and administered by Florida Medicaid. MediPass was established in 1991 to assure adequate access to coordinated primary care while decreasing the inappropriate utilization of medical services. In MediPass, each participating Medicaid recipient selects or is assigned a health care provider who furnishes primary care services, 24-hour access to care and referral and authorization for specialty services and hospital care. The primary care provider is expected to monitor appropriateness of health care provided to his or her patients. *See generally*, http://ahca.myflorida.com/Medicaid/MediPass/index.shtml (last visited March 31, 2009).

previous five years. The bill deletes the provision allowing a physician to serve an a forensic evaluator, thus limiting appointed experts to psychiatrists and licensed psychologists.

The bill requires that competency evaluations of juveniles (like those of adults) be conducted in such a way as to ensure uniform application of the criteria enumerated in Rule 8.095, Florida Rules of Juvenile Procedure. The bill also requires that a court-appointed expert in a juvenile case must be a psychiatrist, a psychologist or a physician and must have completed forensic evaluator training approved by the department within the past five years. After July 1, 2010, an expert can remain on the department's registry only if he or she has taken or retaken the training within the past five years.

Time Frames for Transporting Forensic Clients (Sections 11 and 12 of SB 2018)
The bill amends ss. 916.13 and 916.15, F.S., to require that a defendant, who has been involuntarily committed due to mental illness or upon adjudication of not guilty by reason of insanity, must be transported back to jail to await a competency or commitment hearing within 15 days after the court receives notice that the defendant is competent to proceed or no longer meets the criteria for involuntary commitment. The bill also requires that a court hearing must be held within 30 days of the court's receipt of such notification.

The bill clarifies that the Department of Corrections (DOC) is responsible for providing competency training to an inmate who is charged with a new felony or entitled to a mandatory appeal and adjudicated incompetent to proceed.

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The continuation of psychotherapeutic medication upon admission to a forensic facility from a jail without consent may implicate the right to privacy and, in turn, "the right to make choices pertaining to one's health, including the right to refuse unwanted medical treatment."[37]

[37] *In re Browning*, 568 So.2d 4, 10 (Fla. 1990). *See also*, *Satz v. Perlmutter*, 379 So.2d 359 (Fla. 1980), *adopting* 362 So.2d 160 (Fla. 4th DCA 1980)(patient suffering from terminal illness was entitled to remove a mechanical respirator); *Public Health Trust v. Wons*, 541 So.2d 96 (Fla. 1989)(woman allowed to exercise her constitutional right to refuse a blood

The right of an incompetent, civilly committed individual to refuse medication has not been explicitly considered by the United States Supreme Court, nor by the Florida Supreme Court. However, in a recent and comprehensive decision, the Alaska Supreme Court found that a civilly committed individual has a fundamental right to refuse medication, and held that "in the absence of emergency, a court may not authorize the state to administer psychotropic drugs to a non-consenting mental patient unless the court determines that the medication is in the best interests of the patient and that no less intrusive alternative treatment is available."[38]

In addition, assuming the amendment to the Medicaid state plan is approved and implemented, if there are more potential clients of the program than there are slots, an argument may be made that the state's failure to fund a sufficient number of waivers may violate the Americans with Disabilities Act.[39] Other issues relating to a potential waiting list for the waiver (*e.g.*, whether the waiting list moves at a reasonable pace, or the fairness of the waiting list and how persons are ranked, and whether funding of the waiver has remained stagnant) may also be raised.[40]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Professionals who must take or retake the forensic evaluator training course will be required to pay a fee for such training. In 2007, the fee for such course was $445 per person.[41]

C. Government Sector Impact:

Department of Children and Families
In its 2008-2009 Legislative Budget Request (LBR), the department requesting funding for "Florida's Sequential Intercept and Redirection Program." The department initially requested **$21,620,000** nonrecurring, general revenue to fund the project in three circuits for nine months. In March 2008, the department submitted an amended LBR requesting **$7,168,033** to fund a modified version of the project in three circuits for six months. The project was not funded for FY 2008-2009.

Although the department anticipates that the bill will lower demand for costly services in jails, emergency rooms, and other crisis settings, and result in less crime, enhanced public

transfusion on religious grounds); *Singletary v. Costello*, 665 So.2d 1099 (Fla. 4th DCA 1996) (state did not have interest sufficient to override inmate's right to refuse medical care that would interfere with his self-declared hunger strike).
[38] *Myers v. Alaska Psychiatric Institute*, 138 P.2d 238, 239 (Alaska 2006).
[39] *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999).
[40] AHCA, *supra* note 17.
[41] DCF, *supra* note 1.

safety, fewer injuries to law enforcement officers, and decreased homelessness, it did not provided a fiscal impact analysis in its analysis of this bill.[42]

The department states that it is seeking "federal grant opportunities" and, a**s** forensic diversion in the community continues, it plans to move "deep end service dollars to front end service." In addition, the department states that Reinvestment Grants over 3 years will deliver $22 million (when county match dollars are included) in planning, infrastructure, and treatment, which will be used to support the provisions of the Act proposed by this bill.[43]

Agency for Healthcare Administration
If the Medicaid State Plan Amendment option for new forensic treatment services is federally approved and implemented, the bill will have an administrative and fiscal impact on AHCA.[44]

Currently, mental health services for the individuals in this targeted population, who are Medicaid eligible and incarcerated or institutionalized, are provided by the county jails, DCF, or DOC. When these individuals return to the community, those eligible for enrollment into managed care are placed in a prepaid mental health plan or a managed care plan in the Medicaid Area where they reside.[45]

The Medicaid State Plan Amendment option creating the home and community based services proposed under this legislation will reimburse providers through Medicaid fee-for-service, bypassing significant utilization management processes. If federal approval is granted, the agency estimates that the cost of the home and community-based services will be $12,453 per person per year, for up to 1,000 individuals. Medicaid will require three new Medical Health Care Program Analyst positions to implement this new initiative.[46]

The home and community-based services option cannot be implemented by the effective date of the bill, as it requires federal approval of a State Plan Amendment. The agency estimates that this process will require at least one year. In the meantime, one FTE position responsible for services and program development will be needed on July 1, 2009, for a total fiscal impact of **$67,272** in FY 2009-10 ($33,636 General Revenue).[47]

The agency estimates that for FY 2010-2011, upon implementation, the total cost of funding the s. 1951i state plan amendment services described in the bill will be **$12,651,455** ($5,703,077 from General Revenue, with a federal share of $6,948,378).[48]

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[42] *Id.*
[43] E-mail correspondence from Gina Sisk, DCF, Legislative Affairs (Tuesday, March 24, 2009 5:29 PM) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[44] AHCA, *supra* note 17.
[45] *Id.*
[46] *Id.* at p. 4.
[47] According to the agency, if it does not receive an appropriation of funds for the purpose of applying for a state plan amendment, it will not move forward with seeking approval and there will be no administrative or fiscal impact on the agency. *Id.*
[48] For a detailed analysis of the fiscal impact of this bill, see *id.* at pp. 7-12.

VI. Technical Deficiencies:

At line 389, the bill refers to the "Chief Justice of the Supreme Court" as a recipient of the annual report from the Technical Center. The entity should be more clearly identified as the Chief Justice of the *Florida* Supreme Court.

The bill states in Section 6 that, "[t]he agency *may* disenroll from enrollment in MediPass, or any capitated or other Medicaid managed care arrangements, those individuals receiving services under this subsection." This language would allow all recipients receiving services under the 1915i State Plan Amendment (including individuals eligible for mandatory managed care) to disenroll from a Medicaid managed care option (MediPass or managed care plan) at any time. By disenrolling this targeted population, AHCA would then be precluded from locking the specified recipients (who are also eligible for mandatory managed care) into a managed care option. The current lock-in period for Medicaid managed care is 12 months.

Section 7 of the bill states: **"**Persons…*are* exempt from MediPass and managed care plans authorized under this chapter, including capitated managed care plans authorized under s. 409.91211." This language will exempt recipients who will be eligible for or receiving services under the 1915i State Plan Amendment from enrollment in MediPass and managed care plans, as authorized under Chapter 409. The language in these two sections creates an apparent conflict.[49]

On line 437, "servicer" should read "services."

At lines 609-612, the bill requires that a forensic evaluator training course approved by the department must be provided at least annually, but it does not specify which entity is responsible for providing the training.

At lines 788-789, the bill references a specific section of the Florida Rules of Juvenile Procedure. Because the Rules may be amended at any time without a concurrent amendment to the Florida Statutes, it may create confusion to include a specific citation.

At line 799, the bill provides that a court-appointed expert in a juvenile case must be a psychiatrist, licensed psychologist, or a physician. This is inconsistent with the requirements for an appointed expert in an adult case.

The bill requires appointed experts in juvenile cases to complete forensic evaluator training, but it does not require the department or any other entity to develop or provide such training. In addition, the bill provides the conditions under which experts may remain on the "department's registry," but it does not define the registry for purposes of s. 985.19, F.S. (See line 655 of the bill.)

[49] *Id.* In addition, under either the "may disenroll" or the "are exempt" language, AHCA would be required to amend the 1915(b) Managed Care Waiver and the 1115 Medicaid Reform Waiver to exempt all recipients specified in the bill from enrollment in these managed care waivers. This change could potentially impact the cost-effectiveness of the 1915(b) Managed Care Waiver and the budget neutrality of the 1115 Medicaid Reform Waiver. The Agency would also be required to amend all health plan contracts to exempt recipients of these community-based services from enrollment in the plans.

The bill has an effective date of July 1, 2009. According to AHCA, the home and community-based services option cannot be implemented by this date, as it requires federal approval of a state plan amendment.[50]

VII. Related Issues:

The bill permits the department to "identify geographic areas of the state for initial implementation," but it does not specify the number of areas to be identified. In addition, it is unclear if the implementation is to be undertaken subject to appropriation or within available resources or otherwise.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 154306 by Children, Families, and Elder Affairs on April 6, 2009:
This strike-all amendment to SB 2018 makes the following changes to the original bill:

- Moves the Act to a different section of statute (from new s. 394.9086 to new s. 394.4656, F.S.);
- Removes the definitions of "agency" and "department" ("department" is defined in the chapter already, but "agency" is not);
- Changes language relating to the implementation of the Act from mandatory to permissive (except at line 82 of the amendment);
- Adds to the list of services to be part of the forensic system the use of involuntary outpatient treatment;
- Deletes the requirement that DCF conduct annual, onsite contract monitoring;
- Adds the requirement that DCF provide an annual report on implementation of the Act;
- Specifies the areas in which demonstration sites may be implemented (Escambia, Leon, Dade counties and Tampa Bay area);
- Deletes the requirement that the Technical Center develop minimum competencies and proficiencies, identify evidence-based and best practices, and provide an annual report on implementation of the Act;
- Corrects a conflict in the Medicaid sections relating to MediPass;
- Removes references to DOC inmates in sections relating to forensic transport;
- Changes the timeframes for forensic transport; and
- Clarifies procedures for appointment of experts in juvenile competency cases.

(WITH TITLE AMENDMENT)

[50] *Id.*