

**STORAGE NAME:** h1777s1.lt

**DATE:** April 8, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
ELDER AFFAIRS & LONG TERM CARE  
ANALYSIS**

**BILL #:** CS/HB 1777

**RELATING TO:** Mental Health

**SPONSOR(S):** Representative Reddick

**COMPANION BILL(S):** SB 242 (Similar)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CHILDREN & FAMILIES YEAS 6 NAYS 2
  - (2) ELDER AFFAIRS & LONG TERM CARE YEAS 7 NAYS 0
  - (3) HUMAN SERVICES APPROPRIATIONS
  - (4)
  - (5)
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**I. SUMMARY:**

CS/HB 1777 includes the following provisions:

- ▶ Requires the Department of Children and Family Services to develop strategies for diverting persons with mental illness who are arrested for misdemeanors from the criminal justice system to the mental health system.
- ▶ Requires the Louis de la Parte Florida Mental Health Institute at the University of South Florida to review the diversion strategies and report to the Legislature.
- ▶ Requires the Department of Law Enforcement and the Department of Children and Family Services to evaluate the training provided to law enforcement officers in identifying mental illness and report to the Legislature.
- ▶ Requires the Department of Children and Family Services to contract with the Florida Mental Health Institute to study extending court jurisdiction of persons with mental illness who are arrested for or convicted of misdemeanors, and to prepare a report with recommendations.
- ▶ Requires the department to report on in-jail mental health diagnostic and treatment services.
- ▶ Requires that the Louis de la Parte Florida Mental Health Institute evaluate the mental health court in Broward County and report to the Legislature.
- ▶ Provides a \$100,000 appropriation.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Statutory Framework

Florida's mental health law, ch. 394 (Part I), F.S., the Baker Act, encourages local communities to provide mental health treatment to persons who exhibit nonviolent criminal behavior rather than place them in the criminal justice system. Section 394.462, (1)(f) F.S., requires that a law enforcement officer who has custody of a person because of noncriminal or minor criminal behavior who meets the involuntary examination criteria in s. 394.463(1), F.S., transport that person to the nearest Baker Act receiving facility for a psychiatric examination. Transporting to receiving facilities does not always occur as many of these persons with mental health problems are taken to county jails. Data are not available, however, that specify the number or percentage of these persons who are taken to Baker Act receiving facilities as opposed to a county detention facility.

Chapter 98-92, Laws of Florida, amended the Forensic Client Services Act, ch. 916, F.S., by restricting commitment to the department to defendants charged with a felony who have been found to be incompetent to proceed due to mental illness, retardation, or autism or who have been acquitted of felonies by reason of insanity. Section 916.106(4), F.S., defines "court" as circuit court which excludes county court judges from having commitment authority.

Misdemeanants with Mental Illness

The issue of community safety and appropriate treatment alternatives for misdemeanants with mental illness is of great concern to Florida's county judges. Judges and other professionals in Florida's criminal system and mental health system find that many persons with mental illness who commit misdemeanors cycle in and out of the county jails because these persons do not have access to the appropriate mental health treatment and support services.

In the case of *Onwu v. Florida*, 692 So.2d 881 (Fla. 1997), the Florida Supreme Court ruled that only a circuit court as defined in s. 916.106(2), F.S., may commit a person to the department for services under ch. 916, F.S. Many county court judges continue to want the option of committing misdemeanants to the department under ch. 916, F.S. Prior to April 1997, approximately 60 to 80 persons with mental illness who committed misdemeanors were committed to the Department of Children and Family Services each year by the county courts for placement in Florida's secure forensic units under the authority of ch. 916, F.S.

The Senate Committee on Children, Families & Seniors conducted an Interim Study in 1998 related to misdemeanants with mental illness. According to information gathered for the Committee's interim project, community experts believe that persons with mental illness continue to commit misdemeanors for the following reasons: (1) many persons are not diagnosed and treated in jail immediately after arrest, (2) many persons who are stabilized in jail or in a mental health facility decompensate quickly when returning to their home because the appropriate psychiatric medications or other treatment modalities that help maintain mental stability are discontinued, and (3) there is insufficient management and monitoring of the client in the community to assure that service needs are being met. Poor coordination of existing resources and the lack of integration of mental health and criminal justice programs are cited by many experts as a major problem that hampers services to this population. The majority of the respondents to the Senate survey believe that placing misdemeanants with mental illness in secure expensive forensic facilities with persons who have committed serious offenses would "criminalize" persons with mental illness in order to obtain mental health services.

In-jail Mental Health Services

Counties are responsible for providing mental health care to jail inmates based on: (1) tort liability because the inmate is involuntarily detained and therefore cannot seek the required care and (2) minimum constitutional standards of care in correctional facilities through case law interpretation of the U.S. Constitution pursuant to the 8th amendment (cruel and unusual punishment) and the 14th amendment (due process of law).

### Mental Health Court

In an attempt to expedite treatment services for the misdemeanant with mental illness, in May 1997, Chief Judge Dale Ross in the 19th Judicial Circuit appointed Ginger Lerner-Wren an acting circuit court judge in all matters relating to mental health, substance abuse, and developmental disabilities. This specialized court in Broward County focuses upon persons arrested for misdemeanor offenses who are mentally ill or mentally retarded and their need for appropriate treatment in a therapeutic environment as well as insuring the protection of the public. This mental health court meets daily for the judge to determine whether each defendant requires immediate psychiatric treatment in a hospital setting, whether mental competency is an issue, the specific types of community mental health services that may be needed, and whether there are public safety issues.

Research has not been conducted on the mental health court concept to determine its effectiveness with the misdemeanant mentally ill, but research conducted on drug courts by Columbia University's National Center on Addiction and Substance Abuse found that drug courts provide closer, more comprehensive supervision and much more frequent monitoring of the client's behavior than other forms of community supervision. Drug use and criminal behavior were found to be substantially reduced while offenders are participating in drug court.

### Court Jurisdiction

States have been searching for effective strategies to engage persons with serious and persistent mental illness in community treatment, enhance compliance with treatment plans, and thereby prevent relapse and rehospitalization in the more costly inpatient programs. The costs of housing and treating these persons with mental illness who commit misdemeanors are a major responsibility for counties because these persons are usually detained in jail facilities. Some states are using court-ordered community treatment or involuntary outpatient treatment to enforce treatment compliance. No studies have examined the extent to which outpatient commitment affects compliance and treatment when essential community services such as case management are consistently and aggressively provided.

### B. EFFECT OF PROPOSED CHANGES:

CS/HB 1777 directs that strategies and community alternatives be implemented in each service district of the Department of Children and Family Services for diverting from the criminal justice system to the civil Baker Act system certain persons with mental illness who are arrested for a misdemeanor. It requires the department and the Louis de la Parte Florida Mental Health Institute to conduct studies related to such diversion and report to the legislature.

### C. APPLICATION OF PRINCIPLES:

#### 1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Directs the department to develop written cooperative agreements with the judicial system, criminal justice system, and the local mental health providers in each service district that define strategies and community alternatives for diverting from the criminal justice system to the civil Baker Act system certain persons with mental illness who are arrested for a misdemeanor. Minimal requirements for the agreements are specified such as consideration of pre-booking or post-booking interventions. The bill requires client population data, an analysis of available and unavailable resources, and the identification of key indicators that will measure the impact of these strategies on the clients and on the community systems. The districts' diversion strategies, client data analysis, and identification of key indicators must be completed by October 1, 1999.

The Louis de la Parte Florida Mental Health Institute is directed to review the district diversion strategies as well as cost-effective strategies being used in communities in other states to divert misdemeanants from the criminal justice system to the mental health system. Based on this review, the Institute must recommend to the Legislature by January 1, 2001, those diversion strategies and treatment activities used by Florida or other states that have proven to be the most effective with the misdemeanor population. The institute must include details about the cost savings that are associated with those programs, the results that can be expected based on the current level of resources, and any additional resources needed to adequately serve the misdemeanor population. A preliminary report is due to the Speaker and the President by January 1, 2000.

Section 2.

Directs the Florida Department of Law Enforcement and the department to jointly evaluate the extent and effectiveness of current training curricula and training efforts provided by the Criminal Justice Standards and Training Commission under s. 943.17, F.S., and by the department under ch. 394, Part I, F.S., for law enforcement officers in identifying mental illness and to prepare a joint report by December 31, 1999, that includes findings and recommendations for improvements.

Section 3.

Directs the department, in consultation with the Office of the State Courts Administrator, to contract with the Louis de la Parte Florida Mental Health Institute to study the concept of increasing court jurisdiction and supervision over persons with mental illness who are arrested for or convicted of a misdemeanor to assure compliance with an approved individualized treatment or service plan. The department must prepare a report by December 31, 1999, that includes any recommendations for statutory or non-statutory policy changes.

Section 4.

The district forensic coordinators in the department are instructed to assess the provision of in-jail mental health diagnostic and treatment services and prepare a report of their findings, conclusions, and recommendations by December 31, 1999.

Section 5.

Provides that reports required in sections 2, 3, and 4 of the act shall be prepared by the department and must be submitted as one report to the President of the Senate and to the Speaker of the House by December 31, 1999.

Section 6.

Directs the Florida Mental Health Institute to evaluate the effectiveness of the specialized mental health court established in Broward County to determine client and system outcomes and cost efficiencies and to make recommendations for establishing similar special courts in other judicial circuits. The Florida Mental Health Institute must report to the Legislature on the findings of the evaluation including recommendations for any statutory revisions by October 1, 2000.

Section 7.

Appropriates \$100,000 of general revenue for Fiscal Year 1999-2000 to the department to implement sections 1, 3, and 6 of the bill, but limits to \$20,000 the funds used to implement the requirements of section 1.

Section 8.

Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

\$100,000 of general revenue is needed to study the concept of increasing court supervision over the misdemeanor mentally ill population and to review the district diversion strategies in Florida and other states.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The provisions of this bill reflect the recommendations made in a Senate Interim Project Report 98-06, *Role of the County Courts Under Chapter 916, F.S., Responding to Persons with Mental Illness Who Commit Misdemeanors*. The interim project report concluded that very few local communities have implemented effective strategies for diverting from the criminal justice system to the civil Baker Act system persons with mental illness who are arrested for a misdemeanor.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute changes a reporting date from January 1, 2000 to January 1, 2001. It provides that persons convicted of a violation of chapter 794 (sexual battery), 800 (lewdness; indecent exposures), 827 (abuse of children), or 847 (obscene literature; profanity), Florida Statutes, shall not be diverted from the criminal justice system to the mental health system. It specifies that the Florida Mental Health Institute shall be the contractor for studying the concept of increasing court jurisdiction and supervision over persons with mental illness who are arrested for or convicted of a misdemeanor.

VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

Prepared by:

Bob Barrios

Staff Director:

Bob Barrios

AS REVISED BY THE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

Prepared by:

Melanie Meyer

Staff Director:

Tom Batchelor, Ph.D.