

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Health and Human Services Appropriations Committee

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BILL: CS/CS/SB 1246

SPONSOR: Health and Human Services Appropriations Committee, Children and Families Committee and Senator Margolis

SUBJECT: Arrest of an Elderly Person

DATE: April 21, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<b>Fav/CS</b>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>_____</u>	<u>_____</u>	<u>JU</u>	<b>Withdrawn</b>
4.	<u>Peters</u>	<u>Peters</u>	<u>HA</u>	<b>Fav/CS</b>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
6.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

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## I. Summary:

The Committee Substitute for CS/SB1246 directs the Department of Elder Affairs (DOEA) to establish a workgroup to study the involvement of older adults age 60 and above with the criminal justice system. Particular emphasis is to be placed on older adults age 70 and above. The bill additionally specifies the areas that are to be addressed by the workgroup as a part of the study.

This bill provides for the composition of the workgroup and requires all costs of a member's participation to be borne by the agency or organization that appointed the member. Members of the workgroup are entitled to receive reimbursement for per diem and travel. The Secretary of DOEA, or his or her designee, is directed to serve as chairman and to provide for the support of the workgroup.

The workgroup is directed to complete a report of its findings and make recommendations for proposed legislation if any is warranted. This report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the appropriate substantive committees no later than January 31, 2006.

If approved, this act takes effect on July 1, 2005.

This bill creates an undesignated section of law.

## II. Present Situation:

The largest number of adults who are 60 years of age or older living in the United States reside in Florida, and a growing number of these individuals are becoming involved with the criminal justice system.<sup>1</sup> There have been a number of cases reported when an older adult who was suffering from dementia or some other type of mental health condition was arrested and taken into custody. Unfortunately, the aggression and confusion that are symptoms of these diseases can be mistaken for criminal behavior. Patient advocates have expressed concern that with a growing elder population, there will continue to be an increase in these types of arrests.

The justice system is ill-equipped to deal with these types of cases. Police, prosecutors, and judges struggle to balance the humane treatment of this elderly population against the need to protect the public. It is also difficult to determine when older individuals who are experiencing a mental decline are no longer culpable for their actions.

Individuals who suffer from dementia and other types of mental impairment appear to deteriorate more rapidly while incarcerated, and, with the current system, anywhere from days to months may elapse before the individual is evaluated for another placement. Advocates for the aging believe there is a need to change the provisions of current laws in order to improve the chances that older adults who are mentally impaired will receive treatment rather than going to jail. It is currently unknown how many older adults who are experiencing deteriorating mental capacity come into contact with the criminal justice system annually.

### Current Laws

Chapter 901, F.S., specifies the requirements of or criminal procedures relating to arrests but does not provide for special procedures based upon the individual's age or age-related disabilities.

However, s. 907.041(3)(b)(1), F.S., authorizes the non-monetary release of an accused individual based on the person's mental condition unless that individual has been charged with a dangerous crime. Section 907.04(4)(d), F.S., requires that when an individual is charged with a crime for which pre-trial intervention could be ordered, the arresting agency must notify the state attorney of the arrest. Under the provisions of this section, the defendant may be held for up to 5 days until a hearing is conducted. During the time spent awaiting a hearing, older adults may experience a significant deterioration in their physical and mental condition.

Provisions for mentally deficient and mentally ill defendants who are charged with committing felonies are specified under ch. 916, F.S. This chapter specifies requirements for expert training that may be completed by certain professionals who evaluate a defendant's competency to proceed, provides for the court appointment of these experts, identifies who these experts may be, specifies the criteria that must be considered by an expert when determining whether or not an individual is competent to proceed, and provides for the commitment of individuals meeting certain criteria. Currently, individuals who are declared incompetent to proceed or not guilty by reason of insanity may be held in jail for up to 15 days while awaiting placement. Although the

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<sup>1</sup> Program description, The Center on Aging of Florida International University.

forensic mental health program attempts to divert or to identify alternative placements for older adults, it is not always possible to do so.

Section 394.462, F.S., (The Baker Act) provides that if an officer has custody of a person, based on either non-criminal or minor criminal behavior, who meets the statutory guidelines for involuntary examination, the officer must transport the person to the nearest receiving facility for examination. Persons who are arrested for felony offenses must first be processed in the same manner as any other criminal detainee. While receiving facilities are not required to admit a person who is charged with a crime if the facility cannot provide adequate security, the facility is required to provide mental health examination and treatment to the person where he or she is held.

### **III. Effect of Proposed Changes:**

The Committee Substitute for CS/SB1246 directs the Department of Elder Affairs (DOEA) to establish a workgroup to study the involvement of older adults age 60 and above with the criminal justice system. Particular emphasis is to be placed on older adults age 70 and above. This bill specifies that the study must:

- Determine the extent to which older adults who are alleged to have committed crimes result in arrest and the impact of arrest on older adults and on state law enforcement and the criminal justice system;
- Examine the incidence of and issues surrounding older adults with dementia or other mental health or physical health conditions and determine how these conditions affect their involvement with the criminal justice system;
- Determine the extent to which current programs including, but not limited to, the community and forensic mental health, substance abuse, and domestic violence systems, and specialty courts are addressing the issues experienced by older adults involved in the criminal justice system;
- Determine the unmet health, mental health, and other social service needs of individuals who are arrested which, if met, would result in the reduced arrest or incarceration of these individuals as well as reduced recidivism;
- Determine the state's current capacity to provide for early identification of older adults who are arrested and who have significant medical issues or mental health conditions and the state's current ability to respond in a meaningful and timely manner to these issues;
- Identify the services and best practices which, if implemented, would ensure the early identification, assessment, treatment, and diversion of older adults who are arrested and ensure more effective use of available resources;
- Gather information on private and public model programs within Florida and in other states that offer elements that should be expanded in this state or applied statewide;
- Explore the concept of an elder court system and determine the feasibility and advisability of establishing this type of specialty court; and
- Specify, to the extent possible, the costs associated with such services and best practices that are identified by the workgroup and identify possible public and private sources of revenue to address those costs.

This bill provides that the workgroup must be composed of 13 members and specifies the membership of the workgroup. The costs of a member's participation on the workgroup are to be borne by the agency or organization that appointed the member. Members of the workgroup are allowed to receive per diem and travel reimbursement as provided in s. 112.061, F.S. The Secretary of DOEA, or his or her designee, is directed to serve as chairman and to provide for the support of the workgroup.

The workgroup is directed to complete a report of its findings and make recommendations for proposed legislation if any is warranted. This report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the appropriate substantive committees no later than January 31, 2006.

The study conducted by this workgroup will result in the collection of information that is needed to identify the services and treatment that are needed by older adults who become involved in the criminal justice system. This information may be used to help reduce the inappropriate arrest and incarceration of elders suffering from dementia or other mental health or physical conditions.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None

**VII. Related Issues:**

According to reports provided by the Florida Department of Law Enforcement, approximately 2,000 individuals 70 years of age or older were arrested annually over the past two years.

There are some initiatives being conducted by The Center on Aging at Florida International University to study the issues around aging offenders and the judicial system.

The Elder Justice Center in West Palm Beach is available to persons over the age of 60 who become involved in the court system. This center coordinates in-jail screening for older inmates to determine individual needs. Funding for this program is provided by the county and other local organizations such as the Alzheimer's Community Care Association in West Palm Beach.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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