

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1379

Older Adults and the Criminal Justice System

SPONSOR(S): Gelber

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	7 Y, 0 N	Weyand	Liem
2) Criminal Justice Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 1379 creates a time-limited workgroup to study the involvement of older adults in the criminal justice system.

The bill provides specific requirements for the workgroup: requirements of the study, membership, per diem and travel reimbursement for members, report requirements, workgroup dissolution, an appropriation, and a start date.

The bill appropriates \$200,000 from the General Revenue Fund and allows for per diem and travel expenses incurred by members of the workgroup.

The bill takes effect July, 1 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

- Provide Limited Government --- HB 1379 requires the Department of Elder Affairs to establish a workgroup to conduct a study and prepare and submit a report for the Legislature. Employees from 10 various state and local agencies are required to become members of the workgroup.

B. EFFECT OF PROPOSED CHANGES:

Establishment of the Workgroup

The bill directs the Department of Elder Affairs (DOEA) to establish a workgroup to study older adults age 60 and above within the criminal justice system. The study will place particular emphasis on older adults age 70 and above.

The study shall address the following questions:

- To what extent do crimes committed by older adults result in arrest? If so, how does this affect these older adults and the criminal justice system?
- How do dementia and other mental illnesses affect older adults' involvement with the criminal justice system?
- To what extent do current programs including the community and forensic mental health, substance abuse, and domestic violence systems, and specialty courts address the issues of older adults in the criminal justice system?
- Can meeting health, mental health, and social service needs of older adults result in reduced arrests, incarcerations, and recidivism?
- What is the state's capacity to provide early detection of significant medical issues or mental health conditions and what is its ability to respond timely and meaningfully?
- What services and practices would ensure the best early detection, assessment, treatment, and diversion of older adults who are arrested to ensure more effective use of available resources?
- What are the costs of services and practices identified by the workgroup?

This bill provides that the workgroup must be composed of at least 10 members from various state and local agencies. The Secretary of DOEA, or his or her designee, is directed to serve as chairman and to provide for the support of the workgroup. Members of the workgroup are allowed to receive per diem and travel expense reimbursement as provided in s. 112.061, F.S.

A report addressing the findings of the workgroup must be prepared by DOEA and submitted to the President of the Senate, the Speaker of the House or Representatives, and the chairpersons of the appropriate substantive committees no later than January 31, 2006. The workgroup will be dissolved upon the submission of this report.

The sum of \$200,000 is appropriated from the General Revenue Fund to DOEA for the purpose of paying for the costs of carrying out the provisions of this bill.

Background

Florida is home to the country's largest population of adults who are 60 years of age and older. A growing number of these individuals are becoming involved with the criminal justice system.¹ A number

of older adults suffering from dementia or some other mental health condition have been arrested and taken into custody. Aggression and confusion exhibited by some older adults may be symptoms of dementia or some other mental health condition rather than criminal behavior. Advocates have been concerned that with a growing elder population, arrests such as these will increase.

This bill seeks to better equip the justice system to navigate cases such as these. Police, prosecutors, and judges must attempt to balance the humane treatment of this elderly population with their duty to protect the public. It can be difficult to determine when older adults experiencing mental decline are no longer culpable for their actions.

Individuals suffering from dementia and other types of mental impairment may deteriorate more rapidly while incarcerated. A period of days or 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 opportunity for mentally impaired older adults to receive treatment rather than going to jail. Information on the number of mentally impaired older adults coming in contact with the criminal justice system does not currently exist.

Current Laws

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

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 must be held for up to 5 days until a hearing is conducted. During the time awaiting a hearing, older adults may experience a significant deterioration in their physical and mental condition.

Provisions for mentally deficient or 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 forensic mental health programs attempt 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.

C. SECTION DIRECTORY:

Section 1. Directs DOEA to establish a time-limited workgroup to study the involvement of older adults with the criminal justice system.

Section 2. Appropriates \$200,000 from the General Revenue Fund to DOEA to pay for costs associated with the workgroup.

Section 3. Provides that the bill will take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Appropriates \$200,000 from the General Revenue Fund to DOEA to pay for costs associated with the workgroup.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES