

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 Judiciary Committee

BILL: CS/CS/CS/SB 1180

INTRODUCER: Judiciary Committee, Governmental Oversight and Accountability Committee, Children, Families, and Elder Affairs Committee, and Senators Wise and Dockery

SUBJECT: Workgroup on Forensic Mental Health

DATE: April 22, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Walsh	CF	Fav/CS
2.	Cellon	Cannon	CJ	Favorable
3.	McKay	Wilson	GO	Fav/CS
4.	Treadwell	Maclure	JU	Fav/CS
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates a workgroup comprised of 20 specific members to review state policy and budgeting issues affecting adults with serious mental illness who also have involvement with the state criminal justice system. The bill directs the workgroup to conduct a review of various aspects of the criminal justice and mental health systems and produce reports with findings and recommendations.

Under the provisions of this bill, the Secretary of the Department of Corrections and the Secretary of the Agency for Health Care Administration will oversee and provide staff and administrative assistance to the workgroup. These agencies, including the Department of Children and Families, are permitted to use the assistance of outside research organizations to collect information for the workgroup.

The bill specifies certain areas for the workgroup to review and requires the workgroup to complete an interim report by January 5, 2010, and a final report by January 5, 2011.

The bill does not amend or create sections of the Florida Statutes.

II. Present Situation:

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 mental illnesses, or co-occurring mental illness and substance abuse disorders.¹ Each year as many as 125,000 adults with mental illnesses requiring immediate treatment are arrested and booked into Florida jails. The vast majority of these individuals are charged with minor misdemeanors or low-level felony offenses that are the direct result of their psychiatric illnesses.²

Department of Corrections Mental Health Services

The Department of Corrections estimates that 17.7 percent of its inmate population is diagnosed with a mental disorder that requires ongoing mental health care.³ The delivery of mental health services for inmates begins at the reception centers and continues throughout incarceration according to the individual's needs. Inmates move between five levels of mental health care depending on their needs. The five levels of care are:

- **Outpatient Care** involves regular monitoring, evaluation, group counseling, individual counseling, and psychotropic medications, when clinically indicated. Inmates reside in the general prison community and report to the institutional health clinic to receive medications or other mental health services.
- **Infirmary Mental Health Care** is the first and least restrictive of four levels of inpatient mental health care and consists of brief admission (1-14 days) to the institutional infirmary for inmates residing in the general prison community. Infirmory Mental Health Care is indicated whenever mental health staff determines that an inmate who is residing in the general prison community presents with mental health problems or conditions that cannot be safely or effectively managed on an outpatient basis. Admission to Infirmory Mental Health Care is often precipitated by mental health crisis involving assessed risk of serious self-injurious behavior. If the crisis is not resolved within 14 days, the inmate is typically transferred to the next level of inpatient care, which is Crisis Stabilization Unit.
- **Crisis Stabilization Unit** involves admission to a locked, highly structured, specially designed mental health unit that is separate from the general prison community. Inmates in a Crisis Stabilization Unit are classified as experiencing very severe mental impairment. If the inmate's condition stabilizes to the point that he or she can be safely discharged, he or she will be transferred to outpatient care or to a lower level of inpatient care, which is a Transitional Care Unit.
- **Transitional Care Unit** is appropriate for inmates who require more intensive service than what can be provided in Outpatient Care or Infirmory Mental Health Care, but whose condition is not so acute as to require care in a Crisis Stabilization Unit. Inmates in a Transitional Care Unit are classified as having severe or chronic impairment, and they

¹ Update Briefing, Mental Health Initiative, October 2008, Judge Steven Leifman (on file with the committee.)

² Transforming Florida's Mental Health System, Supreme Court of Florida, November 2007 (on file with the committee).

³ Department of Corrections, *Bill Analysis SB 1180*, (Feb. 11, 2009).

typically remain in the unit for extended periods (six months or longer). Some inmates remain in the unit for years because their level of functioning does not reach the threshold required for discharge to outpatient care. If the inmate who is assigned to a Crisis Stabilization Unit requires a higher level of care, he or she is referred for admission to Acute Inpatient Mental Health Care at a Corrections Mental Health Facility, the highest, most intensive level of mental health care available to inmates.

- ***Acute inpatient mental health care*** is provided at a Corrections Mental Health Facility, which is a locked, secure, and highly structured setting away from the general prison community. Admission to a Corrections Mental Health Facility requires judicial commitment, which lasts for six months. Staff may request additional commitments in six-month increments indefinitely, commensurate with the inmate's ongoing needs assessment.⁴

The Department of Corrections expended over \$68.5 million for mental health services during FY 2007-08.⁵

Department of Children and Families Forensic Mental Health Programs

Existing law requires the department to establish, locate, and maintain secure forensic facilities and programs for the treatment or training of defendants who have been charged with a felony and who have been found to be incompetent to proceed due to their mental illness, or who have been acquitted of a felony by reason of insanity, and who are committed to the department.⁶

The state civil⁷ and forensic⁸ treatment facilities provide the following services:⁹

- ***Basic Support Services*** - include provision of the basic requirements for survival such as shelter, food, clothing, and a sense of personal safety.
- ***Healthcare Services*** - intended to identify and treat physical and mental illness and promote good health. The priorities of health care services are:
 - Routine physical and mental health assessment, evidence-based treatment, and health education;

⁴ Email from Tommy Maggitas, Department of Corrections (March 9, 2009, 5:07 PM EST) (on file with the committee).

⁵ Department of Corrections, *Bill Analysis SB 1180* (Feb. 11, 2009) (on file with the committee).

⁶ Sections 916.10-916.1093, F.S.

⁷ Section 916.106(4), F.S., defines a civil facility as a mental health facility established within the department or by contract with the department to serve individuals committed pursuant to ch. 394, F.S., and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, F.S., designated by the agency to serve those defendants who do not require the security provided in a forensic facility.

⁸ Section 916.106(10), F.S., defines a forensic facility as a separate and secure facility established within the department or agency to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents.

⁹ Florida Department of Children and Families, *State Mental Health Treatment Facilities*, available at <http://www.dcf.state.fl.us/mentalhealth/amhfacilities.shtml> (last visited Apr. 16, 2009).

- Rapid response to acute illness or injury;
 - Ongoing management of chronic health conditions; and
 - Provision of pharmacotherapy with clinical pharmacology oversight.
- ***Recovery Services*** - consist of psychiatric evaluation, diagnosis, holistic recovery planning with the individual and interdisciplinary team, stabilization of the symptoms of mental illness through psychotherapeutic medication and recovery therapies, restoration of optimum level of functioning, and transition to community placement with the appropriate support services in place.
 - ***Continuity of Care Services*** - include internal case management services and community linkages designed to ensure that essential services are being provided consistent with the individual's recovery plan. The state mental health treatment facilities work in partnership with the community providers and circuits to facilitate continuous services and support for people transitioning from the facility back into the community.
 - ***Competency Restoration Training and Evaluation Services (in forensic facilities)*** - involve group or individual processes. The focus of training is on helping individuals to understand the judicial process, the role of the court, the nature of their charges, the possible penalties, and their personal legal rights. Competency evaluations are completed, as needed, and competency evaluation reports are prepared for the courts indicating the individual's progress, as required.
 - ***Workgroups Related to Criminal Justice and Mental Health*** - There are several ongoing initiatives that are attempting to address the growth in numbers of persons with a mental illness who encounter the criminal justice system. In 2007, the Supreme Court of Florida appointed Judge Steven Leifman as Special Advisor on Criminal Justice and Mental Health. Judge Leifman coordinated several workgroups on behalf of the court including Criminal Justice. The efforts of the Supreme Court and the appointed workgroups culminated in a report/plan titled "Transforming Florida's Mental Health System." The report included recommendations for a mental health system to prevent individuals (with mental illness) from entering the justice system and assisting persons already involved with the justice system to get the treatment they need. Bills to implement recommendations in the report were considered during the 2008 Regular Session.¹⁰

III. Effect of Proposed Changes:

The bill creates a workgroup to review state policy and budgeting issues affecting adults with serious mental illness who also have involvement with the state criminal justice system. The bill provides that the Agency for Health Care Administration (AHCA) and the Department of Corrections (DOC) will oversee and provide staff and administrative assistance to the group.

¹⁰ HB 7085; CS/CS/CS/SB 1150 (2008 Reg. Sess.).

Workgroup Membership

The bill creates a 20-member workgroup consisting of a representative from the Substance Abuse and Mental Health Corporation, as well as appointments from the following:

- Florida Legal Service;
- Florida Psychiatric Society;
- Correctional Medical Authority;
- Florida Prosecuting Attorneys Association;
- Florida Public Defender Association;
- Florida Association of Court Clerks;
- Florida Assisted Living Affiliation;
- Florida Council for Community Mental Health;
- Florida Department of Children and Families;
- Florida Agency for Health Care Administration;
- Florida Department of Corrections;
- Florida Sheriffs Association;
- Florida Police Benevolent Association;
- Florida chapter of the National Alliance for the Mentally Ill;
- Florida Hospital Association representing private receiving facilities;
- Florida Psychological Association;
- President of the Senate;
- Speaker of the House of Representatives; and
- Governor.

The bill provides that members of the workgroup are to serve without compensation. However, governmental entities may reimburse the travel and per diem expenses of workgroup members employed by governmental entities as provided in s. 112.061, F.S. The bill specifies that private employers may reimburse the per diem and travel expenses of workgroup members employed by private employers pursuant to the employer's own travel reimbursement policies.

Under the provisions of the bill, the workgroup will be required to meet four times per year at the Department of Children and Families' offices, in Tallahassee. However, the workgroup is permitted to use electronic means of communication, such as conference calls, webinars, and video conferencing, when conducting its meetings. Pertaining to format, the bill provides that all workgroup meetings be organized and conducted in accordance with Robert's Rule of Order.¹¹

The bill allows the use of the Louis de la Parte Florida Mental Health Institute for research and analysis of data projects identified by the chair and members of the workgroup.

Components of Review

The bill provides that the workgroup's review is to include:

¹¹ *Roberts Rules of Order*, written by General Henry M. Robert, is the leading manual of parliamentary procedure used to govern meetings and assemblies.

- Identification of all state funds that are expended on adults with mental illnesses who have legal involvement with state and county courts as specified in the bill.
- A detailed examination of community based service delivery systems and programs targeting persons at high risk for court or legal involvement.
- A review of data, utilization, and cost analysis for individuals involved in different forensic settings who have either had involvement with state-funded substance abuse and mental health services or have been charged with misdemeanors or felonies, and have a diagnosis of serious and persistent mental illness.
- A review of utilization data and costs for individuals who have traumatic brain injuries and have involvement in different forensic settings and have involvement with state-funded substance abuse and mental health services.
- A review of data and research recommendations on the efficacy of various forensic mental health settings.
- A review of relevant criminal codes, penalties, and sentencing guidelines pertaining to forensic mental health.
- An assessment of changes needed to protect public safety while ensuring the needs of the mentally ill, including elimination of the use of prisons as a means of caring for these individuals.
- Identification of model programs, practices, and innovative solutions to improve cost effectiveness, and to help reduce the impact on the state budget, and to improve public safety.
- Consideration of innovative proposals that optimize state funding.
- The development, with AHCA, of an innovative Medicaid waiver that would help support stable housing and services for those individuals defined as at risk of court-related involvement.
- A review of the impact of substance abuse on the system, along with methods to create integration and the use of Medicaid waivers.
- A review of involuntary outpatient commitment requirements under the Baker Act and whether changes to the Act would reduce the need for court involvement in the process.
- A review of the use and impact of electronic medical records.
- A review and comparison of the practices and standards used in correctional facilities in providing mental health care for individuals who are incarcerated.
- Consideration of plans and recommendations concerning methods of diverting mentally ill inmates to less restrictive and less expensive alternatives using conditional release or probation.
- A review of probation and parole requirements for modifications to assist with improving community placement and community control for the mentally ill who are eligible for probation.

The bill allows the participating agencies to use outside research organizations. The workgroup must submit findings and recommendations along with interim and final reports to the Senate, House, and Governor. The interim report is due January 5, 2010, and the final report is due January 5, 2011.

The bill provides that the workgroup terminates and this section of law expires on July 1, 2011.

The bill has 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A “workgroup” is not an entity specified in ch. 20, F.S., which provides the organizational structure of the executive branch. Although the Legislature has in recent years created a few workgroups, the entity created by this bill appears to most resemble a “committee” or “task force,” as specified in s. 20.03, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Judiciary on April 21, 2009:

The committee substitute:

- Eliminates the duty of the Department of Children and Families to provide staff and other administrative assistance to the workgroup; and
- Clarifies who may reimburse per diem and travel costs associated with participation in the workgroup and in accordance with what policies.

CS/CS by Governmental Oversight and Accountability on April 16, 2009:

The committee substitute:

- Deletes a provision allowing the use of funds appropriated under the American Recovery and Reinvestment Act of 2009.
- Deletes a provision that workgroup expenses unrelated to travel would be paid from funds appropriated to DCF, AHCA, and DOC.

CS by Children, Families, and Elder Affairs on March 25, 2009:

The committee substitute:

- Provides that DCF, AHCA, and DOC are to use funds appropriated under the American Recovery and Reinvestment Act of 2009 to support the needs of the workgroup.
- Revises the composition of the workgroup.
- Clarifies that each member of the workgroup is entitled to reimbursement for travel and per diem.
- Provides that the Florida Mental Health Institute may be used by the workgroup to perform research and analysis.
- Removes a provision making OPPAGA available as a source of outside research.
- Makes other technical changes.

B. Amendments:

None.