

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 349 Workgroup on Forensic Mental Health

SPONSOR(S): Adkins and others

TIED BILLS: IDEN./SIM. BILLS: SB 1180

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee	7 Y, 0 N	Schoolfield	Schoolfield
2)	Public Safety & Domestic Security Policy Committee			
3)	Health & Family Services Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

This bill creates a 24 member 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 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. The Secretaries of the Department of Children and Families, Agency for Health Care Administration and Department of Corrections shall oversee and provide staff and administrative assistance to the group. The workgroup may use the assistance of outside research organizations including the Office of Program Policy Analysis and Government Accountability (OPPAGA). The workgroup will:

- Identify state funds expended on mental illness as specified in the bill,
- Examine community based service systems,
- Consider the efficacy of various forensic mental health settings,
- Review the criminal code, penalties and sentencing guidelines relating to forensic mental health,
- Assess system changes needed, including eliminating use of prisons for caring for mentally ill,
- Identify cost effective model programs and practices, and use of current funding more effectively,
- Review involuntary commitment requirements under the Baker Act,
- Review use of electronic medical records,

The workgroup must complete an interim report by January 5, 2010, and a final report on January 5, 2011.

The bill is expected to have an indeterminate fiscal impact on the Department of Children and Families, Department of Corrections and the Agency for Health Care Administration.

This law would sunset on July 1, 2011.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Background on criminal justice involvement with mental health*

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.<sup>1</sup> 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 and/or low level felony offenses that are the direct result of their psychiatric illnesses.<sup>2</sup>

##### *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. This percent has nearly doubled since 2005, when 9.5 percent of inmates were reported as part of the mental health caseload.<sup>3</sup> 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 include:

- 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.
- Infirmiry 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 infirmiry for inmates residing in the general prison community. Infirmiry 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 Infirmiry 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,

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<sup>1</sup> Update briefing, Mental Health Initiative, Judge Steven Leifman

<sup>2</sup> Transforming Florida's Mental Health System, Supreme Court of Florida

<sup>3</sup> Correctional Medical Authority Annual Report 2005-2006.

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 very severe mental impairment. If the inmate's condition stabilizes to the point that he/she can be safely discharged, he/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 Infirmary 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 typically remain in the unit for extended periods (6 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/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 6 months. Staff may request additional commitments in 6-month increments indefinitely, commensurate with the inmate's ongoing needs assessment.<sup>4</sup>

The Department of Corrections expended over \$68.5 million for mental health services during FY 2007-2008.<sup>5</sup> The quality of physical and mental health care in correctional facilities is monitored by the Correctional Medical Authority.<sup>6</sup>

#### *Department of Children and Families Forensic Mental Health Programs*

The Department of Children and Families provides mental health assessment, evaluation, and treatment of individuals committed to the department following adjudication as incompetent to proceed during a criminal proceeding or not guilty by reason of insanity. The individuals committed for involuntary treatment are charged with a felony offense and are mandated to be admitted to a treatment facility within 15 days of the department's receipt of a complete commitment packet from the courts. The department provides competency restoration training and treatment services to the individuals committed. The department served 3,031 individuals during FY 2007-08, in 1,702 forensic beds at an annual budget over \$209 million. The department also provides community forensic services through in-jail and community competency restoration services.

In late 2006, the number of persons waiting for forensic treatment reached levels never before experienced, and the department was unable to comply with the law mandating treatment within 15 days. The forensic waiting list reached a peak of 343 individuals on October 2, 2006, with 277 of those persons awaiting admission an average of 72 days.<sup>7</sup> The Legislative Budget Commission took action in January 2007, to appropriate funds to address this problem. The department opened additional forensic beds with the funding and enhanced the use of community forensic services to come into compliance with timeframes in the law.

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<sup>4</sup> Email dated February 26, 2009, from Tommy Maggitas, Department of Corrections.

<sup>5</sup> HB 349 analysis by Department of Corrections, February 9, 2009.

<sup>6</sup> In July 1986, while the state's prison health care system was under the jurisdiction of the Federal Court, pursuant to *Costello v. Wainwright*, the Florida Legislature established the Correctional Medical Authority (CMA).

<sup>7</sup> Forensic Mental Health Update, Department of Children and Families, November 15, 2007

## *Workgroups related to Criminal Justice and Mental Health.*

There are several ongoing initiatives which 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 an 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. A bill to implement key recommendations in the report passed the House during the 2008 session,<sup>8</sup> but did not pass the Senate. Similar legislation has been filed in the Senate for the 2009 session.<sup>9</sup>

The 2007 Legislature created the Criminal Justice, Mental Health and Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Corporation. Members of the Council include the Secretaries of Department of Children and Families, Corrections, Agency for Health Care Administration, Juvenile Justice, and Elderly Affairs. The Council also includes the Chair of the Corporation and the State Courts Administrator. The purpose of the council is 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 legislative proposals and budget requests for individuals who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in, or at risk of entering, the criminal justice system.<sup>10</sup>

The 2007 Legislature also created the Criminal Justice, Mental Health and Substance Abuse Reinvestment Grant Program to create local initiatives focused on individuals with mental disorders who are in or at risk of entering the criminal justice and juvenile justice systems.<sup>11</sup> Under the terms of the legislation, counties may apply for a one year planning grant or a three year implementation grant. During FY 2007-2008, twelve counties were awarded planning grants and eleven counties received implementation grants from the program. The same 2007 legislation also created the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center at the Florida Mental Health Institute at the University of South Florida. The centers purpose is to assist counties in projecting and monitoring the effect of their grant-funded intervention on the criminal justice system and jails. The center also acts as a clearinghouse for the dissemination of information on best practices and other information and material relevant to criminal justice, juvenile justice, mental health and substance abuse.<sup>12</sup>

### **Effects of the Bill**

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 Secretaries of the Department of Children and Families, Agency for Health Care Administration and Department of Corrections shall oversee and provide staff and administrative assistance to the group.

The bill creates a 24-member workgroup consisting of representatives from the following: Department of Children and Families, Agency for Health Care Administration, Department of Corrections, the Florida Sheriffs Association, the Florida Prosecuting Attorneys Association, the Florida Public Defender Association, the Florida Council for Community Mental Health, the Florida Psychiatric Society, the Florida Assisted Living Affiliation, the Office of Program Policy Analysis and Government Accountability, the National Alliance on Mental Illness, Florida Legal Services, and members appointed by the Chief Justice of the Florida Supreme Court, Speaker of the House of Representatives, Senate President, and Governor.

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<sup>8</sup> HB 7085

<sup>9</sup> SB 2018

<sup>10</sup> s.394.655(11)(a),F.S.

<sup>11</sup> s.394.656,F.S.

<sup>12</sup> Annual Report on the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program Act, January 2009.

The workgroup is charged to conduct a review to include:

- Identification of all state funds that are expended on adults with mental illnesses 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 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 eliminating the use of prisons as a means of caring for these individuals.
- Identification of model programs, practices, and innovative solutions to improve cost effectiveness.
- Consideration of innovative proposals that optimize state funding.
- A review of substance abuse issues on the system and consider the best ways to use Medicaid waivers.
- Consideration of using institutional and community funding for a more effective system.
- A review of involuntary outpatient commitment requirements under the Baker Act.
- A review of the use and impact of electronic medical records.

The bill allows for the use of outside research organizations, including but not limited to the Office of Program Policy Analysis and Government Accountability. 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.

This law would sunset on July 1, 2011.

#### B. SECTION DIRECTORY:

**Section 1.** Creates a workgroup on forensic mental health to review state policy and budgeting issues affecting adults with serious mental illness who have involvement with the state criminal justice system.

**Section 2.** Provides for an effective date of July 1, 2009

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Yes, however the fiscal impact is indeterminate. See fiscal comments below.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated.

D. FISCAL COMMENTS:

The number of times that the workgroup would meet and participants required to travel is not specified in the bill. Any member of the workgroup who is a public employee would be entitled to reimbursement for per diem and travel expenses. The expenses of the workgroup, other than member travel, must be paid from funds appropriated to the Department of Children and Family Services, the Department of Corrections, and the Agency for Health Care Administration. These Departments are not currently funded for this workgroup activity. The Department of Children and Families (DCF) fiscal analysis included the need for OPS staff to oversee the project. DCF estimated a cost to implement the bill of \$226,000 for FY 2009-10 and \$113,000 for FY 2010-11. The Department of Corrections and Agency for Health Care Administration fiscal analysis was indeterminate.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill overlaps with the 2007 Legislative directive to the Criminal Justice, Mental Health and Substance Abuse Policy Council s. 394.655(11), F.S., which sunsets in October 2011. However, the Legislative direction to the Policy Council is less specific than the contents of this bill. In addition, the directives to the workgroup in this bill will cover some but not all parts of the contents reported by the Supreme Court of Florida related to preventing individuals (with mental illness) from entering the justice system and assisting persons already involved with the justice system.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2009, the Health Care Services Policy Committee adopted a strike all amendment to the bill. The amendment:

- Deletes s. 394.655(11), F.S., that established and provided duties of the Criminal Justice, Mental Health, And Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Corporation. This would eliminate the Council's purpose to align policy initiatives in the criminal justice, juvenile justice and mental health systems. This also eliminates the directive to the Council to work with counties who are recipients of Reinvestment Grants.
- Creates a workgroup to review state policy and budgeting issues affecting adults with serious mental illness who also have involvement with the criminal justice system.
- Designates the Secretaries of the Department of Children and Families, Department of Corrections and Health Care Administration to oversee and staff the workgroup.
- Provides for the membership of the workgroup.
- Provides for location and frequency of meetings and that expenses of the workgroup other than travel will come from appropriations to the Department of Children and Families, Department of Corrections and Health Care Administration.
- Authorizes the workgroup to request research and analysis from the Louis de la Parte Florida Mental Health Institute.
- Provides details of the review to be conducted by the workgroup to include:
  - Identification of state funds expended on adults with mental illnesses who have legal involvement with courts.
  - An examination of community based service delivery systems.
  - A review of data and costs for individuals with mental illnesses or traumatic brain injuries who are involved with the criminal justice system.
  - A review of role and cost of early discharges and inappropriate placements.
  - A review of criminal code, including penalties and sentencing guidelines.
  - Identification of innovative solutions to reduce need for incarceration.
  - A process for reviewing innovative proposals.
  - Development of a proposal for a Medicaid waiver for at risk individuals.
  - A review of the impact of substance abuse on the system and method to better integrate treatment.
  - A review of involuntary outpatient commitment requirements under the Baker Act.
  - A review of the status and use of electronic medical records.
  - A review of practices and standards of correctional facilities.
  - The consideration of methods to divert inmates to less restrictive settings using conditional release or probation.
  - A review of probation and parole requirements.
  - A review of discharge practices from correctional and state forensic facilities.
- Authorizes the workgroup to use outside research organizations.
- Requires the workgroup to make recommendations in interim and final reports and sets due dates.
- Requires reports to include recommendations on changes to penal code, sentencing guidelines, mental health policy, and improve public safety with a goal of reducing reliance on jails and prisons.
- Sets the workgroup to terminate on July 1, 2011.

The bill was reported favorably as a committee substitute.