

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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, As CS	Schoolfield	Schoolfield
2)	Public Safety & Domestic Security Policy Committee		Krol	Kramer
3)	Health & Family Services Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

This 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 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 Family Services, the Agency for Health Care Administration and the Department of Corrections will oversee and provide staff and administrative assistance to the group. These agencies may use the assistance of outside research organizations including the Office of Program Policy Analysis and Government Accountability to collect information for the workgroup.

The workgroup will:

- Identify state funds expended on mental illness as specified in the bill;
- Examine community based service systems;
- Review use and costs associated with courts and incarceration for individuals charged with misdemeanors or felonies and are diagnosed with a mental illness;
- Review use and costs associated with courts and incarceration for individuals with traumatic brain injuries;
- Review of early discharge and inappropriate incarceration;
- Review the criminal code, penalties and sentencing guidelines relating to forensic mental health;
- Identify cost effective model programs and practices, and use of current funding more effectively;
- Consider the efficacy of various forensic mental health settings;
- Develop legislation in conjunction with the Agency for Health Care Administration;
- Review the effect of substance abuse issues on the system and ways to use Medicaid waivers;
- Review involuntary commitment requirements under the Baker Act;
- Assess system changes needed, including eliminating use of prisons for caring for mentally ill;
- Review use and cost of electronic medical records;
- Review and comparison of mental health care practices and standards used during incarceration;
- Consider methods of diverting mentally ill inmates through the use of conditional release or probation;
- Review probation and parole requirements for individuals diagnosed with a mental illness; and
- Review discharge practices for individuals diagnosed with a mental illness.

The bill provides a meeting schedule and location for the workgroup.

The workgroup must complete an interim report no later than January 5, 2010, and a final report with recommendations by January 5, 2011.

The workgroup will terminate and this section created will expire on July 1, 2011.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/18/2009

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,¹ or co-occurring mental illness and substance abuse disorders.² Each year as many as 125,000 adults with mental illnesses requiring immediate treatment are arrested and booked into Florida jails. The majority of these individuals are charged with minor misdemeanors and/or low level felony offenses that are the direct result of their psychiatric illnesses.³

Department of Corrections and 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.⁴ This percent has nearly doubled since 2005, when 9.5 percent of inmates were reported as part of the mental health caseload.⁵ An inmate may be admitted to a mental health facility⁶ if he or she is mentally ill and is in need of care and treatment, as defined in s. 945.42, F.S.⁷ 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.

¹ Section 916.106(13), F.S., defines "mental illness" as "an impairment of the emotional processes that exercise conscious control of one's actions, or of the ability to perceive or understand reality, which impairment substantially interferes with a defendant's ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants with only mental retardation or autism and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment."

² Update briefing, Mental Health Initiative, Judge Steven Leifman.

³ Transforming Florida's Mental Health System, Supreme Court of Florida.

⁴ HB 349 analysis by Department of Corrections, February 9, 2009.

⁵ Correctional Medical Authority Annual Report 2005-2006.

⁶ Section 945.42(8), F.S.

⁷ Section 945.43(1), F.S.

- 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, the inmate is typically transferred to the next level of inpatient care, which is Crisis Stabilization Unit.
- Crisis Stabilization⁸ 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 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 Care⁹ Unit is appropriate for inmates who require more intensive service than what can be provided in Outpatient Care or Infirmiry 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 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 6 months. Staff may request additional commitments in 6-month increments indefinitely, commensurate with the inmate's ongoing needs assessment.¹⁰

The Department of Corrections expended over \$68.5 million for mental health services during FY 2007-2008.¹¹ The quality of physical and mental health care in correctional facilities is monitored by the Correctional Medical Authority.¹²

The Department of Children and Family Services and Mental Health Programs

The Department of Children and Family Services (DCF) provides mental health assessment, evaluation, and treatment of individuals committed to the department following involuntary commitment (otherwise known as a Baker Act,)¹³ adjudication as incompetent to proceed¹⁴ during a criminal proceeding or not guilty by reason of insanity.¹⁵ 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 DCF's receipt of a complete commitment packet from the courts.¹⁶ DCF provides competency restoration training and treatment services to the individuals committed. It also provides community forensic services through in-jail and community competency restoration services.¹⁷

⁸ Section 945.42(2), F.S.

⁹ Section 945.42(13), F.S.

¹⁰ Email dated February 26, 2009, from Tommy Maggitas, Department of Corrections.

¹¹ HB 349 analysis by Department of Corrections, February 9, 2009.

¹² 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 as found in s. 945.602, F.S.

¹³ Section 394.463, F.S.

¹⁴ Sections 916.13 and 916.302, F.S.

¹⁵ Section 916.15, F.S.

¹⁶ Section 916.107(1)(a), F.S.

¹⁷ Forensic Mental Health Update, Department of Children and Families, November 15, 2007

During FY 2007-2008, DCF served 3,693 adults in the community with forensic involvement¹⁸ and 5,418 adults in mental health facilities, with 3,301 forensic commitments and 1,631 civil commitments.¹⁹ DCF's Mental Health budget appropriation projection for FY 2008-2009 was \$426,600,871.²⁰

In 2006, the number of persons waiting for forensic treatment greatly increased, and DCF 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.²¹ In January 2007, the Legislative Budget Commission appropriated funds to address this problem. DCF opened additional forensic beds with the funding and enhanced the use of community forensic services to come into compliance with timeframes in the law.

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. The efforts of the Supreme Court and the appointed workgroups, including a workgroup relating to criminal justice issues, culminated in a report titled "Transforming Florida's Mental Health System." The report included recommendations for a mental health system that would prevent individuals diagnosed with a mental illness from entering the criminal justice system and assisting persons already involved with the criminal justice system to get the treatment they need. A bill to implement key recommendations in the report passed the House during the 2008 session,²² but did not pass the Senate. Similar legislation has been filed in the Senate for the 2009 session.²³

The 2007 Legislature created the Criminal Justice, Mental Health and Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Corporation.²⁴ Members of the Council include the Secretaries of:

- The Department of Children and Family Services,
- The Department of Corrections,
- The Agency for Health Care Administration,
- The Department of Juvenile Justice, and
- The Department of Elderly Affairs, and
- The Chair of the Corporation and the State Courts Administrator.²⁵

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

¹⁸ DCF reports, "This target population, whose services are provided in the community, includes persons above the age of 17 who meet the following criteria: (a) have an "Incompetent to Proceed" Court Order due to mental illness; or (b) have a "Not Guilty by Reason of Insanity" Court Order; or (c) are on Conditional Release due to mental illness." DCF Quick Facts, February 6, 2009. (<http://www.dcf.state.fl.us/publications/docs/quickfacts.pdf>) Last visited on March 19, 2009.

¹⁹ DCF reports, "This target population, whose services are provided in state mental health treatment facilities (hospitals/institutions), includes persons above age 17, who meet the following criteria: (a) committed in accordance with Chapter 394, Florida Statutes, also known as the Baker Act; or (b) admitted on either a voluntary or involuntary basis; or (c) committed in accordance with Chapter 394, Part V, Florida Statutes, Involuntary Civil Commitment of Sexually Violent Predators." DCF Quick Facts.

²⁰ This includes all DCF mental health appropriations except children's mental health and the sexually violent predator program. DCF Quick Facts.

²¹ Forensic Mental Health Update, Department of Children and Families, November 15, 2007

²² HB 7085

²³ SB 2018

²⁴ Section 394.655, F.S.

²⁵ Section 394.655(11)(a), F.S.

disorder, or co-occurring mental health and substance abuse disorders who are in, or at risk of entering, the criminal justice system.²⁶

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.²⁷ Under the terms of the legislation, counties may apply for a one year planning grant or a three year implementation grant.²⁸ 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.²⁹ The center's purpose is to:

- Provide technical assistance to counties applying for the grant;
- Assist counties in projecting and monitoring the effect of their grant-funded intervention on the criminal justice system and jails;
- Disseminate and share evidence-based practices and best practices among grantees,
- Act as a clearinghouse for information and resources related to criminal justice, juvenile justice, mental health, and substance abuse; and
- Coordinate and organize the process of the state interagency justice, mental health, and substance abuse work group with the outcomes of the local grant projects for state and local policy and budget developments and system planning.³⁰

Effects of the Bill

HB 349 removes from statute the provision that established the Criminal Justice, Mental Health, and Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Corporation. These provisions defined the makeup of the council, and their purpose and duties. The bill eliminates the Council's purpose to align policy initiatives in the criminal justice, juvenile justice and mental health systems.³¹ It also eliminates the directive to the Council to work with counties who are recipients of Reinvestment Grants.³²

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 Secretary of the Department of Children and Family Services, in conjunction with the Secretaries from the Agency for Health Care Administration and the Department of Corrections will oversee and provide staff and administrative assistance to the group with funds appropriated.

The workgroup will be comprised of one member appointed by the:

- Substance Abuse and Mental Health Corporation,
- Florida Legal Services,
- 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,
- Department of Children and Family Services,

²⁶ Section 394.655(11)(b), F.S.

²⁷ Section 394.656, F.S.

²⁸ Section 394.658(2), F.S.

²⁹ Section 394.659, F.S.

³⁰ Section 394.659(1)(a)-(f), F.S.

³¹ Section 394.655(11)(b), F.S.

³² Section 394.655(11)(c), F.S.

- Agency for Health Care Administration,
- Department of Corrections,
- Florida Sheriffs Association,
- Florida Police Benevolent Association,
- Florida Chapter of the National Alliance for the Mentally Ill,
- Office of Program Policy Analysis and Government Accountability,
- President of the Senate,
- Speaker of the House, and
- Governor.

The bill states that members of the workgroup will serve without compensation for their service. Public employees serving on the workgroup are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S. Expenses other than member travel will be paid from funds appropriated to the Department of Children and Family Services, the Department of Corrections, and the Agency for Healthcare Administration.

The bill requires each workgroup meeting be held in Tallahassee at the offices of the Department of Children and Family Services. The workgroup will meet four times a year. Members may use electronic means, such as conference calls, webinars, or video conferencing, to participate in meetings if they are unable to attend in person. Meetings will be organized and conducted using Robert's Rules of Order.

The bill allows the workgroup to identify and request research or analysis of data projects from the Louis de la Parte Florida Mental Health Institute at the University of South Florida under its contract with the Department of Children and Family Services.

The workgroup is charged to conduct a review to include:

- The identification of state funds expended on adults with mental illnesses who have legal involvement with courts;
- A detailed examination of community based service delivery systems and programs targeting persons at high risk for court or legal involvement;
- A review of the use and cost for individuals involved with courts or incarceration and who have been charged with misdemeanors or felonies and are diagnosed with a mental illness;
- A review of the use and costs for individuals with traumatic brain injuries associated with courts or incarceration and state-funded substance abuse programs;
- A review of the role and cost of early discharges and inappropriate placements on the use of state prisons and county jails from facilities that care for individuals diagnosed with a mental illness;
- A review of criminal code, including penalties and sentencing guidelines where changes can be made to ensure public safety while cost efficiently meeting the needs of individuals diagnosed with a mental illness, with a goal of reducing reliance on incarceration;
- The identification of innovative solutions to reduce need for incarceration, improve cost effectiveness and improve public safety;
- A process for requesting and reviewing innovative proposals to help the state optimize state funding through the use of special pilot programs, mental health courts, changes in emergency psychiatric care, new approaches to law enforcement practices and court diversion programs, and the use of modified sentencing or waivers related to the criminal code;
- The 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 the use of involuntary outpatient commitment requirements under the Baker Act to mitigate court involvement. This review will include the work of the Florida Medication Algorithm Project;
- A review of the status and use of electronic medical records;
- A review and comparison of mental health care practices and standards in correctional facilities, county jails, state prisons, or state or private state mental health institutions;

- The consideration of methods to divert inmates diagnosed with a mental illness to less restrictive settings using conditional release or probation;
- A review of rules and policies related to probation and parole requirements for individuals diagnosed with a mental illness; and
- A review of discharge practices for individuals diagnosed with a mental illness.

The bill allows for the Department of Children and Family Services, the Department of Corrections, and the Agency for Health Care Administration to use outside research organizations, including but not limited to the Office of Program Policy Analysis and Government Accountability, to help collect information for the workgroup related to assessing the factors contributing to the rise in the numbers of adults with serious mental illness in the criminal justice system.

The bill requires the interim and final reports to include workgroup recommendations on changes to penal code, sentencing guidelines, mental health policy, and strategies to improve public safety through better integration of behavioral health care at all levels of the criminal justice system, with a goal of reducing reliance on jails and prisons. 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 with recommendations is due January 5, 2011.

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

This act will take effect July 1, 2009.

B. SECTION DIRECTORY:

Section 1. Deletes the provisions establishing a Criminal Justice, Mental Health, and Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Association.

Section 2. 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 3. 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:

See "Fiscal comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal comments."

D. FISCAL COMMENTS:

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 Family Services' fiscal analysis included the need for OPS staff to oversee the project. They report the implementation of this bill is estimated to cost \$226,000 for FY 2009-10 and \$113,000 for FY 2010-11.

The Agency for Health Care Administration reported the fiscal analysis was unable to be determined at this time.

The Department of Corrections reported the impact of this bill is limited.

It appears that private entities serving on the workgroup will be responsible for paying their own expenses without reimbursement.

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 those persons already involved with the justice system.

The bill provides that funds appropriated to the Department of Children and Family Services, the Department of Corrections and the Agency for Health Care Administration will be used to pay for expenses of the workgroup other than member travel. The bill also provides that funds appropriated to these agencies will pay for the oversight and staff provided to the workgroup, in addition to other administrative assistance.

One member of the workgroup will be appointed by the director of the Office of Program Policy Analysis and Government Accountability (OPPAGA.) OPPAGA's participation in a workgroup that is directed by executive agencies may be inconsistent with the legislative intent of its mission.

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 Family Services, 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 Family Services, 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 as:
 - Identify state funds expended on mental illness as specified in the bill;
 - Examine community based service systems;
 - Review use and costs associated with courts and incarceration for individuals charged with misdemeanors or felonies and are diagnosed with a mental illness;
 - Review use and costs associated with courts and incarceration for individuals with traumatic brain injuries;
 - Review of early discharge and inappropriate incarceration;
 - Review the criminal code, penalties and sentencing guidelines relating to forensic mental health;
 - Identify cost effective model programs and practices, and use of current funding more effectively;
 - Consider the efficacy of various forensic mental health settings;
 - Develop legislation in conjunction with the Agency for Health Care Administration;
 - Review the effect of substance abuse issues on the system and ways to use Medicaid waivers;
 - Review involuntary commitment requirements under the Baker Act;
 - Assess system changes needed, including eliminating use of prisons for caring for mentally ill;
 - Review use and cost of electronic medical records;
 - Review and comparison of mental health care practices and standards used during incarceration;
 - Consider methods of diverting mentally ill inmates through the use of conditional release or probation;
 - Review probation and parole requirements for individuals diagnosed with a mental illness; and
 - Review discharge practices for individuals diagnosed with a mental illness.
- Authorizes the use of 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 strategies to improve public safety with a goal of reducing reliance on jails and prisons.
- Sets the workgroup to terminate and this section to expire on July 1, 2011.

The bill was reported favorably as a committee substitute.