

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1189 Mental Health and Substance Abuse Treatment  
**SPONSOR(S):** Health Care Services Policy Committee; Snyder  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1140

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee	13 Y, 0 N, As CS	Schoolfield	Schoolfield
2)	Public Safety & Domestic Security Policy Committee			
3)	Health Care Appropriations Committee			
4)	Health & Family Services Policy Council			
5)				

### SUMMARY ANALYSIS

This bill is based on a plan developed by a statewide task force, convened by the Supreme Court of Florida and consisting of representatives from all three branches of government, as well as leaders from the mental health, substance abuse, and criminal justice fields. It allows the Department of Children and Family Services (DCF) to identify demonstration sites to develop and implement community-based services targeting individuals with severe mental illnesses and/or substance abuse disorders involved in or at risk of becoming involved in the criminal justice system. The bill creates the Community Mental Health and Substance Abuse Crime Reduction Act. Key elements of the bill include:

- Demonstration of a community substance abuse and mental health system targeting individuals at highest risk of involvement in the criminal justice, juvenile justice, and state mental health systems. The demonstrations are to build upon the existing county-based Criminal Justice, Mental Health, Substance Abuse Reinvestment Grant Programs;
- Development of collaborative working relationships with state and local criminal justice and community stakeholders;
- A directive to the Agency for Health Care Administration (AHCA) to plan and make recommendations to the Legislature related to federal financial participation for participants in the Crime Reduction Act ;
- A provision for continued treatment of persons in the community on conditional release who are experiencing an emergency and continued psychotherapeutic medication treatment for persons transferred from jails to state facilities;
- Training and requirements for appointment of forensic mental health experts who evaluate adults and juveniles;
- A requirement for committing courts to place a person on conditional release who meets certain criteria into community residential facilities within the selected pilot site areas for competency restoration.

The bill has an estimated fiscal impact of \$55,824 for FY 2010-11.

The effective date of the bill is July 1, 2010,

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

STORAGE NAME: h1189a.HCS.doc  
DATE: 3/17/2010

## 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

In 2007, the Florida Supreme Court published a report entitled *Mental Health, Transforming Florida's Mental Health System*. According to the report, on any given day 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 serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses and/or substance use disorders requiring immediate treatment are arrested and booked into Florida jails. Of the 150,000 children and adolescents who are referred to Florida's Department of Juvenile Justice every year, more than 70 percent have at least one mental health disorder. The report provided a list of various recommendations to improve Florida's mental health and substance abuse system, reduce recidivism, increase public safety, and increase spending efficiency. This bill seeks to enact some of the recommendations.

In Florida, the cost for forensic mental health services in state treatment facilities is approximately \$200 million annually to fund 1,677 secure and non-secure forensic beds. These beds provide treatment to approximately 3,000 people each year. The demand for forensic beds in Florida reached crisis proportions in 2006, when 300 individuals were on a waitlist for nearly 3 months to be admitted to a forensic bed. To address the backlog, the Legislature appropriated funds to open another 413 beds in treatment facilities and the community.<sup>1</sup>

##### *Community Mental Health and Substance Abuse Treatment and Crime Reduction Act*

This bill creates the Community Mental Health and Substance Abuse Crime Reduction Act in section 394.4656, Florida Statutes. The Act includes legislative intent and seven specific goals for the new program. Goals include the following:

- Ensure public safety;

---

<sup>1</sup> Department of Children and Families Bill Analysis for HB 1189 on file with the Committee.

- Ensure that forensic competency restoration services are provided in the least restrictive, least costly, and most effective environment;
- Provide competency restoration services in the community when appropriate, based on consideration of public safety, needs of the individual and available resources;
- Reduce admissions for competency restoration to state forensic mental health treatment facilities;
- Reduce rates of arrest, incarceration, and re-incarceration for persons in the program;
- Increase outreach and services to individuals at risk of involvement in the criminal justice system, juvenile justice system and forensic mental health system; and
- Support collaboration among state and local stakeholders

The bill adds substantive definitions defining what constitutes *best practices*, *community forensic system*, *community residential facility*, *evidence-based practices*, *forensic intensive care management*, and *geographic area*.

The bill directs the Department of Children and Families (DCF) in consultation with the Agency for Health Care Administration (AHCA), to develop and implement a community mental health and substance abuse forensic treatment system. The community forensic system must build on local community diversion and reentry initiatives and strategies that are consistent with the Substance Abuse and Mental Health Reinvestment Grant Program,<sup>2</sup> or geographic areas that have piloted community diversion programs.

*Services to be included in the Forensic System:*

The bill specifies that the community forensic system initiatives may include, but aren't limited to:

- Mental health courts;
- Diversion programs;
- Alternative prosecution and sentencing techniques;
- Crisis intervention teams;
- Specialized training for criminal justice, juvenile justice, and treatment service professionals;
- Specialized probation officer at the state and county levels to serve individuals under correctional control in the community;
- Collateral services such as supported, transitional, and permanent housing, and supported employment; and
- Reentry services and supports for affected individuals.

Further, this bill dictates that the community forensic treatment system must include a comprehensive continuum of care and services that use evidence-based and best practices to address co-occurring mental health and substance abuse disorders. The system must include, at a minimum, the following services and elements:

---

<sup>2</sup> s. 394.658(1), F.S.

- Competency-restoration and treatment services provided in a variety of settings from least restrictive to progressively more restrictive settings;
- Secure residential placement for initial service and stabilization;
- Forensic intensive care management;
- Supported housing;
- Supported employment;
- Medication management;
- Trauma-specific services;
- Residential services;
- Treatment for co-occurring mental health and substance abuse disorders;
- Outreach and education; and
- Involuntary outpatient placement and conditional release for individuals meeting the criteria for these services.

*Eligibility:*

The bill specifies that initial eligibility for the program shall be limited to adults who are adjudicated incompetent to proceed or not guilty by reason of insanity, whose current most serious charge is a felony of the third degree or a felony of the second degree if the felony did not involve violence, and who meet public safety criteria established by the court and treatability criteria established by the department for placement in a community setting and who otherwise would be admitted to a state mental health treatment facility.

Contingent on Legislative approval the bill provides authority for DCF to serve the following additional groups:

- Adults who experience serious and persistent mental illnesses re-entering the community from state prisons;
- Adults who have been committed to a state forensic mental health treatment facility after being adjudicated incompetent to proceed or not guilty by reason of insanity, and are released or are pending release to the community by the court after completing competency restoration services or being found to no longer meet the criteria for continued commitment placement;
- Adults who experience serious and persistent mental illnesses, who have a history of involvement in the criminal justice system, or who are at risk of entering or are already involved with the criminal justice system; and
- Children deemed incompetent to proceed under s. 985.19, F.S.

### *DCF Responsibilities:*

The bill directs DCF to develop a continuum of services to implement the Act. The bill specifies that DCF may:

- Define requirements for all providers in the community forensic system;
- Implement demonstration sites for participation,
- Enter into memorandums of agreement with county planning councils or committees;
- Identify providers to implement the continuum of services;
- Establish performance measures and reporting requirements for providers, including, at a minimum:
  - The number of individuals diverted from state forensic mental health treatment facilities;
  - The number of individuals diverted from the criminal justice system;
  - The rates of arrest, incarceration, and re-incarceration for new criminal offenses;
  - The rates of employment; and
  - The annual number of days in a crisis stabilization unit, detoxification facility, short-term residential treatment program, state civil mental health treatment facility, or state forensic mental health treatment facility; and
- Monitor contracts and assess contract performance, and;
- Provide an annual report by October 1 on implementation status.

### *Implementation of Pilot Sites:*

The bill provides that DCF may implement the act within available resources. The bill also provides that DCF in consultation with AHCA may identify geographic areas for up to 3 pilot sites for implementation of the program. Subsection (6)(b) of the bill further defines that implementation sites must demonstrate active and sustained community collaborations. The effect of this section is to require that funding for implementation must come from existing appropriations.

The bill provides that future expansion will be subject to Legislative approval and based on community readiness and the potential for affecting the greatest number of individuals entering the mental health and criminal justice systems. Also included among the criteria for selecting a pilot area are: community readiness, a high bed-utilization rate, successful application for implementation grant funding under the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program, and other elements.

### *Criminal Justice, Mental Health, and Substance Abuse Policy Council*

The Criminal Justice, Mental Health, and Substance Abuse Policy Council is currently established within the Substance Abuse and Mental Health Corporation under section 394.655(11), F.S. The council's purpose 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 legislation relating to various mental health needs.

This bill requires the council to align policy initiatives in the substance abuse systems. The bill also would include as a purpose of the council to provide consultation in the development of comprehensive and cost-effective community-based mental health and substance abuse treatment services.

## *Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program*

The 2007 Legislature created the Reinvestment Grant Program to provide funding to counties to expand initiatives to increase public safety and the effectiveness of treatment to individuals with substance abuse, mental health or co-occurring disorders who encounter the criminal justice system.<sup>3</sup> This bill specifies that, in implementing the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act, DCF and ACHA will work in coordination with counties that received grants under the Reinvestment Grant Program or who have piloted community-based diversion programs.

### *County Planning Councils or Committees*

Each board of county commissioners is required to designate a county public safety coordinating council or another criminal or juvenile justice mental health and substance abuse council or committee, under section 394.657, Florida Statutes. This bill amends the duties of that council to include consulting with local governing bodies when planning or implementing the Act.

### *Optional Medicaid Services*

This bill provides that AHCA shall make plans and develop recommendations to obtain federal financial participation (matching funds to state general revenue) for individual served under the Act. AHCA is to report these recommendations to the Legislature by July 1, 2011.

### *Forensic definitions*

New definitions are added to s. 916.106 to include:

“Aquittee” which means a defendant who has been adjudicated not guilty by reason of insanity, and “Conditional releasee” means a person placed on conditional release pursuant to s. 916.17, F.S.

### *Rights of Forensic Clients*

Chapter 916, Part 1, Florida Statutes is known as the Forensic Client Services Act. Within the Act, s. 916.107, F.S., provides for rights to forensic clients including rights to individual dignity, rights to treatment, and rights to express and informed consent. This applies to forensic clients who have been adjudicated incompetent, not guilty by reason of insanity or persons found incompetent to proceed due to retardation or autism.<sup>4</sup> The definition of forensic client used in the section does not appear to apply to individuals who have been granted conditional release status by the court in lieu of involuntary commitment. A person on conditional release who becomes a danger to self or others and refuses treatment or violates the terms of conditional release can sometimes receive services in a short term residential treatment facility<sup>5</sup> or crisis stabilization unit<sup>6</sup> in the community as an alternative to a state mental health treatment facility.<sup>7</sup>

The bill provides rights to persons on conditional release status to express and informed consent for treatment. Further, the bill provides that if a conditional releasee refuses treatment such as taking medications, then treatment may still be provided under certain circumstances including when the individual is a danger to self or others. This treatment is for individuals in a crisis stabilization unit or short-term residential treatment facility and treatment authorization must be made by a physician for not more than 48 hours. After 48 hours, a petition must be made to the court seeking authorization of further treatment. The effect of this change may allow an individual to remain in the community and receive treatment without having to be admitted to a forensic state mental health treatment facility.

---

<sup>3</sup> s. 394.656, F.S.

<sup>4</sup> s. 916.106(9), F.S.

<sup>5</sup> s. 394.67(3), F.S.

<sup>6</sup> s. 394.67(4), F.S.

<sup>7</sup> s. 394.461(2), F.S.

## *Psychotherapeutic Medication Treatment*

Currently, the law does not provide for continued treatment of medications (without petitioning the court) for an individual who refuses treatment after being transferred from jail to a state mental health treatment facility. This bill provides for uninterrupted treatment for individuals who have been receiving psychotherapeutic medication at a jail at the time of transfer to a state forensic mental health treatment facility. This applies to individuals who lack the capacity to make an informed decision regarding mental health treatment. The admitting physician may order a continuation of psychotherapeutic medication if, in the physician's judgment, abrupt cessation of the medication could cause a risk to the health and safety of the client during the time a court order to medicate is pursued.<sup>8</sup>

## *Training of Mental Health Experts and Appointment of Experts*

The evaluation of defendants for competency to proceed or sanity, subsequent to a felony offense must be conducted by mental health experts who apply uniform criteria based on the Florida Rules of Criminal Procedure. Chapter 916.111, Florida Statutes, provides the authority and guidance for the development of training for mental health experts to complete the forensic evaluations.

The court appoints the experts who conduct the forensic evaluations. Since the late 1980s, DCF has maintained a list of evaluators for the court to choose from who have completed forensic evaluator training. This list is required to be given to the courts annually. Current statute specifies "to the extent possible" the appointed experts shall have completed the forensic evaluator training.<sup>9</sup> Therefore, statute does not mandate that experts performing evaluations must complete the training. In addition, the law does not specify how long an expert may remain on the list of evaluators before they are required to retake the training.

The bill requires the forensic evaluator training course to be provided at least annually. In addition, beginning July 1, 2011, mental health experts who wish to be on the forensic evaluator list must take the training at least once in every five years. Those who have not completed the training within this time frame will be removed from the registry. The bill also clarifies that all experts appointed by the court must have completed the forensic evaluator training in the previous five years.

## *Hearings for Forensic Residents*

Current statute does not require a timeframe for transporting an individual back to jail or scheduling and holding the court hearing for individuals whose competency has been restored or no longer meet criteria for commitment. However, Florida Rules of Criminal Procedure<sup>10</sup> requires the court to hold a hearing to determine if the defendant continues to be incompetent within 30 days of the receipt of a report from the department. When delays occur in the transporting of defendants and the scheduling of competency hearings, the department is unable to make these forensic beds available to new defendants who have been committed by the court and are waiting on placement. Further, the longer a person must wait in jail to have their competency or commitment hearing, the more likely they will decompensate and require a return admission to the state mental health treatment facility for re-stabilization.<sup>11</sup>

The bill amends sections 916.13 and 916.15, F.S., to require a court hearing to be scheduled and occur within 30 days of the court receiving notification that the person is competent to proceed or no longer meets commitment criteria. The purpose of these requirements is to improve timely movement of defendants out of treatment facilities and back to the court system.

---

<sup>8</sup> Under s. 916.107, F.S., which would be amended by this bill, an administrator or designee of a mental health facility is required to petition for a court order authorizing necessary and essential treatment for a client, if a client refuses treatment.

<sup>9</sup> s. 916.115(1)(a), F.S.

<sup>10</sup> Fla. R. Crim. Pro. 3.212(c)(6).

<sup>11</sup> Department of Children and Families Staff Analysis of HB 1189, on file with the Committee.

## *Conditional Release*<sup>12</sup>

Current law allows the committing court to order a conditional release of a person in lieu of an involuntary commitment to a state facility under s. 916.13, F.S. or s.916.15, F.S. The conditional release is based on an approved plan for outpatient care and treatment.

The bill requires the court to place individuals who meet the criteria for involuntary commitment under section 916.13, F.S., in a community residential facility<sup>13</sup> for competency restoration if their current most serious charge is a third degree or second degree non-violent felony. This placement is limited to the pilot areas designated for the Act. The court will not place individuals in the community for competency restoration if bed space or funding is not available or if the court makes a finding that the individual cannot be safely placed in the community. The bill provides criteria for the court to use in making the findings related to safe placement of the individual.<sup>14</sup> The effect of this change is to increase use of community services instead of state treatment facilities for competency restoration and treatment when appropriate.

## *Incompetency in Juvenile Delinquency Cases*

At any time prior to, or during a juvenile delinquency case the court believes a child named in the petition may be incompetent, the court must order an evaluation of the child's mental condition.<sup>15</sup> Current law provides that the evaluation of a child's mental condition must be made by two or three experts appointed by the court. The law does not specify training requirements or credentials for these experts. The basis for determinations of juvenile competency must be specifically stated in an evaluation of the child's mental condition. If the child is found not competent to proceed the court will notify DCF for placement in an appropriate facility for treatment and training.<sup>16</sup>

This bill requires that the competency evaluation be conducted in such a way as to ensure uniform application of the criteria enumerated in Rule 8.095, Florida Rules of Juvenile Procedure. This procedure is for when a child is believed to be incompetent or insane. The bill requires DCF to develop the following:

- A plan for training professionals to perform forensic evaluations and standardized criteria;
- Clinical protocols and procedures;
- Training for professionals in clinical protocols and procedures;
- Procedures for evaluating success of the program.

Further, the bill would require experts appointed by the court to determine juvenile competency to have completed forensic evaluator training approved by the DCF within five years prior to conducting evaluations for the court, and each expert must be a psychiatrist or licensed psychologist. Beginning July 1, 2011, this bill provides for removal from the DCF's registry if the expert does not comply with the training requirements and these experts may not perform competency evaluations..

## **B. SECTION DIRECTORY:**

Section 1. Creates s. 394.4656, F.S., relating to the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act.

Section 2. Amends s. 394.655, F.S., relating to the Substance Abuse and Mental Health Corporation.

---

<sup>12</sup> s. 916.17, F.S.

<sup>13</sup> Community Residential Facility is defined in this bill as a community based treatment setting licensed under s. 394.875, ss. 429.075, or 397.401, F.S.

<sup>14</sup> Including consideration of all of the following: the nature and seriousness of the crime allegedly committed, the individual's criminal history, the individual's psychiatric history, the individual's history of violent behavior or threats of violent behavior and risk of harm to self or others, the likelihood that the individual will comply with and benefit from the mental health treatment and services being recommended, the availability of appropriate community-based services and treatment settings, and other information considered relevant by the court.

<sup>15</sup> s. 985.19,(1), F.S.

<sup>16</sup> s. 958.19(1)and (2), F.S.



Section 3. Amends s. 394.656, F.S., relating to the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.

Section 4. Amends s. 394.657, F.S., relating to county planning councils or committees.

Section 5. Amends s. 409.906, F.S., relating to optional Medicaid services.

Section 6. Amends s. 409.912, F.S., relating to cost-effective purchasing of health care.

Section 7. Amends s. 916.106, F.S., relating to definitions.

Section 8. Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 9. Amends s. 916.111, F.S., relating to training of mental health experts.

Section 10. Amends s. 916.115, F.S., relating to appointment of experts.

Section 11. Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

Section 12. Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 13. Amends s. 916.17, F.S., relating to conditional release.

Section 14. Amends s. 985.19, F.S., relating to incompetency in juvenile delinquency cases.

Section 15. Provides for an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures: The following costs are associated with implementation of the 1915i Medicaid state plan amendment proposed in section 5 of the bill. The 1915i home and community based services cost is based on 1,000 persons @ \$12,453 per person annually.

	FY 10-11 <sup>17</sup>
1 FTE, Medical Health Care Program Analyst (PG 24) including benefits. Position is responsible for program development and implementation.	\$55,824
General Revenue Fund	\$27,912
Medical Care Trust Fund	\$27,912

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

<sup>17</sup> Agency for Health Care Administration Bill Analysis for SB 1140.

2. Expenditures:

DCF anticipates lower demand for costly services in jails, emergency rooms and other crisis settings, less crime, enhanced public safety, fewer injuries to law enforcement officers, and decreased rates of chronic homelessness.<sup>18</sup>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who are required to take the Department-approved Forensic Evaluator Training course in order to be placed on the forensic evaluator registry must pay a fee for the training, estimated to be approximately \$445 per person. The fee for state employees and non-profit companies is \$395 per person. This fee is not new as the training has been in existence for 23 years.<sup>19</sup>

D. FISCAL COMMENTS:

As this legislation is implemented and an increasing number of individuals are served in the community, the Department of Children and Families anticipates a decreased demand for forensic state mental health treatment facility beds. The Department will continue to monitor the utilization of forensic beds as demonstration sites are identified and community forensic programs are implemented and expanded. This will be done with some degree of caution based on the continued need to meet the statutory requirement to move individuals from the jail system to a forensic bed once they are deemed incompetent to proceed. In 2009, the Department successfully contracted with a private provider to operate a short-term residential treatment facility serving forensic clients in Miami-Dade County. Due to available forensic capacity, the Department was able to transfer funding from the facilities budget to the community for this purpose. *As more individuals are able to be served in the community and diverted from forensic treatment facility placement, the Department expects to have additional funding to support this legislation.*<sup>20</sup>

### 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:

None

---

<sup>18</sup> Department of Children and Families Analysis of HB 1189, on file with Committee.

<sup>19</sup> Id.

<sup>20</sup> Id.

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

On March 16, 2010, The Health Care Services Policy Committee adopted 6 amendments to the bill as follows:

Amendment 1: Changes the words “may” to “shall” regarding DCF responsibilities.

Amendment 2: Directs DCF in consultation with AHCA to select 3 pilot sites for the Crime Reduction Act demonstration. Also, adds a requirement for Legislative approval before expanding the pilot program.

Amendment 3: Removes a directive to AHCA to apply for a 1915i Medicaid state plan amendment for Medicaid coverage of a new client group. Instead the amendment requires AHCA to plan, make recommendations and report to the Legislature for obtaining federal financial participation for the demonstration project.

Amendment 4: Removes language exempting participants in the Crime Reduction Act program from Medicaid managed care and MediPass programs.

Amendment 5: Removes a reference to the pilot program in the bill for persons on conditional release status. This change means that laws relating to expressed and informed consent to treatment will apply to all persons on conditional release who are in a crisis stabilization unit or short term residential treatment facility.

Amendment 6: This clarifies that the directive to the courts to place people on conditional release in community residential facilities only applies to persons in the selected pilot areas for the program.