

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: SB 2064

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Mental Health and Substance Abuse Treatment

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Favorable
2.	O'Connor/Maclure	Maclure	JU	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill stems from an interim report of the Florida Senate Committee on Children, Families, and Elder Affairs relating to a forensic hospital diversion pilot program. The bill creates the Forensic Hospital Diversion Pilot Program which is to be implemented in Escambia, Hillsborough, and Miami-Dade counties by the Department of Children and Family Services (DCF or department), in conjunction with the First, Eleventh, and Thirteenth Judicial Circuits.

The purpose of the pilot program is to serve individuals with mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. Eligibility for the pilot program is limited to persons who:

- Are 18 years of age or older;
- Are charged with a felony of the second or third degree;
- Do not have a significant history of violent criminal offenses;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity pursuant to part II of ch. 916, F.S.;
- Meet public safety and treatment criteria established by DCF; and
- Otherwise would be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court to develop educational training for judges in the pilot program areas and authorizes the department to adopt rules. The bill also requires the Office of Program Policy Analysis and Government Accountability to evaluate the pilot program and

submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

The bill also amends Florida's law relating to the involuntary commitment of a defendant who is adjudicated incompetent to provide that a defendant who is being discharged from a state treatment facility shall be provided with up to a seven day supply of the psychotropic medications he or she is receiving at the time of discharge. The bill requires that the most recent formulary approved by the department be used when filling prescriptions for psychotropic medications prescribed to defendants being discharged from state treatment facilities.

Finally, the bill provides that county courts may order the conditional release of a defendant for purposes of outpatient care and treatment.

The bill makes conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 916.106, 916.13, 916.17, and 951.23. The bill creates section 916.185, Florida Statutes.

II. Present Situation:¹

Forensic Mental Health

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 or substance use disorders requiring immediate treatment are placed in a Florida jail.

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17,000 individuals. In the next nine years, this number is projected to reach more than 35,000 individuals, with an average annual increase of 1,700 individuals. Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system.

Forensic Services

Chapter 916, F.S., called the "Forensic Client Services Act," addresses the treatment and training of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or are acquitted by reason of insanity.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been

¹ The information contained in the Present Situation of this bill analysis is from an interim report by the Committee on Children, Families, and Elder Affairs of the Florida Senate. See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Forensic Hospital Diversion Pilot Program* (Interim Report 2011-106) (Oct. 2010), available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-106cf.pdf (last visited Mar. 17, 2011).

adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF or department).

Under the authority of ch. 916, F.S., DCF provides mental health assessment, evaluation, and treatment of individuals committed to DCF following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.² Persons committed to the custody of DCF are treated in one of three forensic mental health treatment facilities throughout the state. These facilities contain a total of 1,700 beds and serve approximately 3,000 people each year. The cost to fund these beds is more than \$210 million annually.³

Individuals admitted to state forensic treatment facilities for competency restoration receive services primarily focused on resolving legal issues, but not necessarily targeting long-term wellness and recovery from mental illnesses. Once competency is restored, individuals are discharged from state treatment facilities and generally returned to jails, where they are rebooked and incarcerated while waiting for their cases to be resolved. A sizable number of individuals experience a worsening of symptoms while waiting in jail, and some are readmitted to state facilities for additional treatment and competency restoration services.

The majority of individuals who enter the forensic treatment system do not go on to prison,⁴ but return to court, and either have their charges dismissed for lack of prosecution or the defendant takes a plea such as conviction with credit for time served or probation.⁵ Most are then released to the community, often with few or no community supports and services in place.⁶ Many are subsequently rearrested and return to the justice and forensic mental health systems, either as the result of committing a new offense or failing to comply with the terms of probation or community control.⁷

Diversion

“Diversion is the process of diverting individuals with severe mental illness and/or co-occurring substance abuse disorders away from the justice system and into the community mental health system, where they are more appropriately served.”⁸ By providing more appropriate community-based services, diversion programs prevent individuals with mental illness and substance abuse

² See s. 916.107(1)(a), F.S.

³ Comm. on Children, Families, and Elder Affairs, *supra* note 1.

⁴ H. Richard Lamb et al., *Community Treatment of Severely Mentally Ill Offenders Under the Jurisdiction of the Criminal Justice System: A Review*, 50 PSYCHIATRIC SERV. 907-913 (July 1999), available at <http://psychservices.psychiatryonline.org/cgi/content/full/50/7/907> (last visited Mar. 18, 2011).

⁵ Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Aug. 20, 2010).

⁶ *Id.*

⁷ *Id.*

⁸ The Supreme Court, State of Florida, *Mental Health: Transforming Florida's Mental Health System*, available at http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf (last visited Mar. 18, 2011).

disorders from becoming unnecessarily involved in the criminal justice system⁹ There are numerous benefits to the community, criminal justice system, and the diverted individual, including:

- Enhancing public safety by making jail space available for violent offenders.
- Providing judges and prosecutors with an alternative to incarceration.
- Reducing the social costs of providing inappropriate mental health services or no services at all.
- Providing an effective linkage to community-based services, enabling people with mental illness to live successfully in their communities, thus reducing the risk of homelessness, run-ins with the criminal justice system, and institutionalization.¹⁰

In Florida, this approach is being tested in the Miami-Dade Forensic Alternative Center (MD-FAC), a pilot program implemented in August 2009 by DCF, the Eleventh Judicial Circuit of Florida,¹¹ and the Bayview Center for Mental Health. The pilot program was established to demonstrate the feasibility of diverting individuals with mental illness adjudicated incompetent to proceed to trial from state hospital placement to placement in community-based treatment and competency restoration services.¹²

“Admission to MD-FAC is limited to individuals who otherwise would be committed to DCF and admitted to state forensic hospitals.”¹³ In order to be eligible for MD-FAC, an individual must be charged with a less serious offense, such as a second or third degree felony. Following admission, individuals are initially placed in a locked inpatient setting where they receive crisis stabilization, short-term residential treatment, and competency restoration services.¹⁴ As of September 2010, twenty-four individuals have been admitted to the pilot program and diverted from admission to state forensic facilities.¹⁵ To serve these 24 people, MD-FAC operates 10 beds, with an average bed per day cost of \$274.00 for a total cost of \$1,000,100.¹⁶ MD-FAC reports that increasing the bed capacity will decrease the average bed per day cost at MD-FAC to less than \$230, with the possibility of further decreasing costs in the future.¹⁷

⁹ *Id.*

¹⁰ Nat’l Mental Health Ass’n, TAPA Ctr. for Jail Diversion, Nat’l GAINS Ctr., *Jail Diversion for People with Mental Illness: Developing Supportive Community Coalitions*, (Oct. 2003), available at http://www.gainscenter.samhsa.gov/pdfs/jail_diversion/NMHA.pdf (last visited Mar. 18, 2011).

¹¹ MD-FAC is part of Eleventh Judicial Circuit Criminal Mental Health Project (CMHP). This CMHP runs four diversion programs (Pre-Arrest Diversion, Post-Arrest Misdemeanor Diversion, Post-Arrest Felony Diversion, and Forensic Hospital Diversion). Interview with Judge Steven Leifman, *supra* note 7. The Eleventh Judicial Circuit includes Miami-Dade County, which has one of the nation’s largest percentages of mentally ill residents. Abby Goodnough, *Officials Clash Over Mentally Ill in Florida Jails*, N.Y. TIMES, Nov. 15, 2006, available at <http://www.nytimes.com/2006/11/15/us/15inmates.html> (last visited Mar. 18, 2011).

¹² Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report* (Aug. 2010) (on file with the Senate Comm. on Children, Families, and Elder Affairs).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Additionally, three individuals who met criteria for admission to the program were subsequently admitted to a state hospital because of lack of bed availability at MD-FAC, i.e., the program was at or above capacity. On average, the program has diverted 2.2 individuals per month from admission to state forensic facilities. *Id.*

¹⁶ *Id.*

¹⁷ Staffing standards at MD-FAC allow for additional bed capacity without substantially increasing program staff or fixed costs. As a result, operations will become more efficient as program capacity is increased. *Id.*

As a result of the MD-FAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities.¹⁸
- The burden on local jails has been reduced, as individuals served by MD-FAC are not returned to jail upon restoration of competency.¹⁹
- Because individuals are not returned to jail, it prevents the individual’s symptoms from worsening while incarcerated, possibly requiring readmission to state treatment facilities.²⁰
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.
- Individuals in the program receive additional services not provided in the state treatment facilities, such as intensive services targeting competency restoration, as well as community-living and re-entry skills.
- It is standard practice at MD-FAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.

County Court Authority

As described above, ch. 916, F.S., allows the circuit court to order forensic commitment proceedings for a defendant adjudicated incompetent to proceed to trial. The Florida Supreme Court, in *Onwu v. State*, ruled that only the circuit court, and not the county court, has the authority to order forensic commitment of persons found incompetent to proceed to trial (ITP)

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Comparison of competency restoration services provided in forensic treatment facilities and MD-FAC (average number of days year to date, FY 2009-10):	Forensic facilities	MD-FAC	Difference*
Average days to restore competency (admission date to date court notified as competent)	138.9	99.3	39.6 days (-29%)
Average length of stay for individuals restored to competency (this includes the time it takes for counties to pick up individuals)	157.8	139.6	18.2 days (-12%)

“The diminishing advantage of MD-FAC over forensic facilities in terms of average number of days to restore competency (39.6 day reduction) and overall average length of stay for individuals restored to competency (18.2 day reduction) relates to the fact that individuals enrolled in MD-FAC are not rebooked into the jail following restoration of competency. Instead, they remain at the treatment program where they are re-evaluated by court appointed experts while the treatment team develops a comprehensive transition plan for eventual step-down into a less restrictive community placement. When court hearings are held to determine competency and/or authorize step-down into community placements, individuals are brought directly to court by MD-FAC staff. This not only reduces burdens on the county jail, but eliminates the possibility that individuals will decompensate while incarcerated and require subsequent readmission to state treatment facilities. It also ensures that individuals remain linked to the service provider through the community re-entry and re-integration process.” *Id.*

¹⁹ MD-FAC program staff provides ongoing assistance, support and monitoring following discharge from inpatient treatment and community re-entry. Additionally, individuals are less likely to return to state hospitals, emergency rooms, and other crisis settings. *Id.*

²⁰ Of the 44 individuals referred to MD-FAC to date, 10 (23 percent) had one or more previous admissions a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

through ch. 916, F.S.²¹ The Court noted that the county court may still commit misdemeanor defendants found ITP through the Baker Act.²²

However, county court judges are without recourse when a misdemeanor defendant found ITP does not meet the criteria for Baker Act involuntary hospitalization, but may still pose a danger to himself or others in the future, and thus requires treatment. In this instance, the county court judge can conditionally release the defendant into the community, but has no authority to order any mental health treatment services. If the defendant receives mental health services while on conditional release, competency may be restored so that a plea can be entered within the year. It is reported that many misdemeanor defendant cases are dismissed by the end of the year because competency has not been restored. In other cases, by the end of the year, the individual has either disappeared or has been rearrested.²³

Committee on Children, Families, and Elder Affairs' Review of the Forensic Hospital Diversion Pilot Program

During the 2011 interim, the Florida Senate Committee on Children, Families, and Elder Affairs studied forensic mental health in Florida and the benefits of a Forensic Hospital Diversion Pilot Program.²⁴ The recommendations identified by the interim report include:

- Expanding the forensic hospital diversion pilot program to other areas of the state. The department and representatives from the Office of the State Courts Administrator suggested pilots be implemented in Hillsborough and Escambia counties because they have the largest forensic need in the state.
- Providing program-specific training to judges in the pilot areas.
- Authorizing county court judges to order involuntary outpatient treatment as a condition of release.

III. Effect of Proposed Changes:

This bill stems from an interim report of the Florida Senate Committee on Children, Families, and Elder Affairs relating to a forensic hospital diversion pilot program. The bill creates the Forensic Hospital Diversion Pilot Program to be implemented in Escambia, Hillsborough, and Miami-Dade counties by the Department of Children and Family Services (DCF or department), in conjunction with the First, Eleventh, and Thirteenth Judicial Circuits. The program is to be implemented within available resources and the bill authorizes DCF to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system. The purpose of the pilot program is to serve individuals with mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. In creating and implementing the program, DCF is directed to include a comprehensive continuum of care and services that use evidence-based

²¹ *Onwu v. State*, 692 So.2d 881 (Fla. 1997).

²² *Id.* Baker Act procedures are found in part I, ch. 394, F.S.

²³ Telephone interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Sep. 28, 2010).

²⁴ Comm. on Children, Families, and Elder Affairs, *supra* note 1.

practices and best practices to treat people who have mental health and co-occurring substance use disorders. The bill provides definitions for the terms “best practices,” “community forensic system,” and “evidence-based practices.”

Eligibility for the pilot program is limited to persons who:

- Are 18 years of age or older;
- Are charged with a felony of the second or third degree;
- Do not have a significant history of violent criminal offenses;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity pursuant to part II of ch. 916, F.S.;
- Meet public safety and treatment criteria established by DCF; and
- Otherwise would be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in consultation with the Supreme Court Mental Health and Substance Abuse Committee, to develop educational training for judges in the pilot program areas. The bill authorizes DCF to adopt rules to administer the program. The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the pilot program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012. The OPPAGA is directed to examine the efficiency and cost-effectiveness of providing forensic services in secure, outpatient, community-based settings in the report.

The bill amends s. 916.13, F.S., relating to the involuntary commitment of a defendant who is adjudicated incompetent, to provide that a defendant who is being discharged from a state treatment facility shall be provided with up to a seven day supply of the psychotropic medications he or she is receiving at the time of discharge. The defendant is to remain on the medications, to the extent it is deemed medically appropriate, in order to accommodate continuity of care and ensure the ongoing level of treatment that helped the defendant become competent. The bill requires that the most recent formulary approved by the department be used when filling prescriptions for psychotropic medications prescribed to defendants being discharged from state treatment facilities. The bill also amends s. 951.23, F.S., to require all county detention facilities, county residential probation centers, and municipal detention facilities filling prescriptions for psychotropic medications prescribed to defendants discharged from state treatment facilities to follow the formulary approved by DCF in order to conform to the changes made in s. 916.13, F.S.

Finally, the bill authorizes a county court to order the conditional release of a defendant for purposes of outpatient care and treatment only. The bill amends the definition of “court” in s. 916.106, F.S., to conform to this change.

The bill shall take effect July 1, 2011.

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 provides that the Forensic Hospital Diversion Pilot Program is to be implemented by the Department of Children and Family Services (DCF or department), in conjunction with the First, Eleventh, and Thirteenth Judicial Circuits in Escambia, Miami-Dade, and Hillsborough counties, “within available resources.” The department is also authorized to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
