

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 Committee on Judiciary

BILL: SB 1452

INTRODUCER: Senator Detert

SUBJECT: Mental Health Services in the Criminal Justice System

DATE: March 30, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 1452 establishes problem-solving courts to address the unique circumstances and potential for treatment of defendants with serious mental illness, veterans, and substance abusers. Veterans' courts and mental health courts will be authorized to transfer cases to other counties on the same basis as that currently afforded to drug court treatment cases. The bill expands the definition of veterans to include veterans who are discharged or released under a general discharge.

The bill makes other changes to attend to the special needs of defendants who are veterans or who have a serious mental illness.

Mental Health Court Programs

The bill expressly recognizes mental health court programs. A mentally ill defendant at the postadjudicatory stage of the criminal process is eligible for participation if the offense charged is a nonviolent felony that scores low points on a scoresheet, the defendant is amenable to treatment, and the defendant has a prior history or present state of serious mental illness or a prior history of incompetence to proceed at trial.

Forensic Hospital Diversion Pilot Program

This bill creates the Forensic Hospital Diversion Pilot Program, which replicates the model of the Miami-Dade Forensic Alternative Center into 2 additional counties. In addition to Miami-Dade, the DCF will implement the program in Escambia and Hillsborough Counties. The purpose of the program is to divert incarcerated defendants found mentally incompetent to proceed or not guilty by reason of insanity into a therapeutic setting which offers beds and community outpatient treatment.

Conditional Release

Current law authorizes circuit courts to order felony defendants with mental illness onto conditional release rather than secure commitment in a forensic facility. This bill authorizes county courts to order conditional release of misdemeanor defendants with mental illness.

The total fiscal impact of the bill, from the provisions creating the pilot program (\$4.5 million) and conditional release for misdemeanor defendants (\$74 million), is almost \$79 million.

II. Present Situation:

Transfer of Criminal Cases Between Counties

Florida law authorizes the transfer of a criminal case between counties in instances in which:

- An indictment or information is pending in one county and a defendant is arrested or held in another county, if the defendant requests in writing to plea guilty or nolo contendere, waive trial in the county in which the warrant was issued, and consent to disposition of the case in another county. The prosecutor of the court in which the indictment or information is pending must also consent to the transfer.¹
- An indictment or information is not pending and a defendant is arrested on a warrant issued upon a complaint in a county other than the county of arrest and requests in writing that he or she wishes to plea guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and consent to disposition of the case in the county in which the defendant was arrested. The prosecuting attorney must also consent to the transfer.
- A defendant is eligible to participate in a drug court treatment program as part of a pretrial intervention program. Additionally, the drug court must consent and the following conditions must be met:
 - The authorized representatives of the drug court programs consult about the transfer;
 - The trial court accepts a plea from the defendant of nolo contendere and enters a transfer order² for the clerk to transfer the case to the county which has accepted the defendant into its drug court program; and
 - Once the transfer takes place, the clerk must schedule a hearing before the drug court for the defendant to begin the drug court program.³

If a case is transferred to a county where the defendant successfully completes a drug court program, the court that received the transfer will dispose of the case by dismissing the criminal charges.⁴ If the court finds that the defendant failed to successfully complete the program, the court may order the defendant to continue education and treatment including through substance-

¹ The formal charging document in a criminal case is known as an indictment or an information. Indictments are returned by a grand jury and presented to the court, and an information is made by a prosecutor in the absence of an indictment by the grand jury. BLACK'S LAW DICTIONARY (10th ed. 2014).

² The transfer order must include all documents relating to the case, including the probable cause affidavit, charging documents, witness statements, the defendant's written consent to abide by all rules of the drug court program, and the defendant's contact information. Section 910.035(5)(c), F.S.

³ Section 910.035(1), (2), and (5), F.S.

⁴ Section 948.08(6)(c), F.S.

abuse treatment or jail-based treatment programs, or authorize the prosecution of the criminal charges.⁵

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.⁶

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.⁷

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The defendant does not have the right to a public defender unless the offender is subject to incarceration if convicted.⁸ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.⁹

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁰

Veterans Programs and Courts for Criminal Offenders

The Use of Veterans' Courts Nationally

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military.¹¹ More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying

⁵ *Id.*

⁶ A misdemeanor is punishable by up to 1 year term in a county jail and a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a) through (d), F.S.

⁷ Section 948.08 (2), F.S.

⁸ Section 948.08(3) and (4), F.S.

⁹ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁰ Section 948.08(1), F.S.

¹¹ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

causes of criminal behavior to “reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety.”¹²

Like other specialty courts, veterans’ courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans’ court to dispose of a case.¹³

Veterans’ Courts in Florida Law

The 2012 Florida Legislature placed into law the “T. Patt Maney Veterans’ Treatment Intervention Act.”¹⁴ The law:

- Recognizes veterans’ courts;
- Requires courts to hold a pre-sentencing hearing if a combat veteran alleges military-related injury, to determine if the defendant suffers from certain conditions, such as post-traumatic stress disorder, a traumatic brain injury, or a substance abuse disorder due to military service;
- Establishes pretrial and post-adjudication intervention programs for combat veterans having pending criminal charges or convictions; and
- Enables counties to establish programs to divert eligible defendants who are veterans into treatment programs.

Veterans’ Courts

The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers who are convicted of criminal offenses.¹⁵ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁶

As of January 2015, 21 veterans’ courts in 20 counties operate in Florida.¹⁷ Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts.¹⁸ Fifty-two percent of the participants faced felony charges, mainly third-degree felonies.¹⁹ Sixty-two percent of the participants in state-funded veterans’ courts between July 2013 and October 2014 had a dual diagnosis of mental health issues and substance abuse.

¹² *Id.*

¹³ *Id.*

¹⁴ Senate Bill 138 (ch. 2012-159, Laws of Fla.).

¹⁵ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁶ The authority for Veterans’ Courts Programs is in ch. 394, F.S., which addresses mental health. Section 394.47891, F.S.

¹⁷ Office of Program Policy Analysis & Government Accountability, *supra* note 11 at 2 and 8. Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate in Fiscal Year 2014-15. Other counties having veterans’ courts are Brevard, Broward, Collier, Hillsborough, Indian River, Lake, Lee, Marion, Osceola, Palm Beach, Seminole, St. Lucie, and Volusia counties. Volusia County maintains two veterans’ courts.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

Pre-trial Intervention Programs

To be eligible to participate in diversion programs, veterans can be charged with misdemeanors²⁰ or felonies.²¹ However, veterans must not be charged with a disqualifying felony offense.

Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.²²

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.²³

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

Post-adjudication Treatment Programs

Veterans and servicemembers²⁴ on probation or community control who committed a crime on or after July 1, 2012, and who suffer from a military-related mental illness, a traumatic brain

²⁰ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

²¹ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

²² Section 948.06(8)(c), F.S.

²³ Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²⁴ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A

injury, or a substance abuse disorder may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²⁵

Mental Health Courts

Florida law does not currently recognize mental health courts as a specialty court.

Forensic Facilities and Mental Health Treatment for Criminal Defendants

State Forensic System

Chapter 916, F.S., governs secure forensic facilities that are under the jurisdiction of the Department of Children and Families. The state forensic system is a network of state facilities and community services for persons who have mental health issues and who are involved with the criminal justice system.

Two types of mentally ill defendants charged with felonies are eligible for involuntary commitment:

- Persons found incompetent to proceed²⁶ to trial or the entry of a plea; and
- Persons found not guilty by reason of insanity.²⁷

Forensic treatment is provided in these settings:

- Separate and secure forensic facilities;
- Civil facilities; and
- Community residential programs or other community settings.

Circuit courts have the option of committing a person to a facility or releasing the person on conditional release.²⁸ Conditional release is release into the community, accompanied by outpatient care and treatment.²⁹ The committing court retains jurisdiction over the defendant while the defendant is either under involuntary commitment or conditional release.³⁰

The DCF oversees two state-operated facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum-security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center. In Fiscal Year 2011-2, the appropriation for state forensic facilities was \$139 million from the General Revenue Fund.³¹

servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. (Section 250.01(19), F.S.)

²⁵ Section 948.21, F.S.

²⁶ Mental incompetence to proceed is defined in s. 916.12(1), F.S.

²⁷ Section 916.105(1), F.S.; The Florida Rules of Criminal Procedure define what is meant by “not guilty by reason of insanity,” rather than the statutes. Section 916.15(1), F.S.

²⁸ Section 916.17(1), F.S.

²⁹ *Id.*

³⁰ Section 916.16(1), F.S.

³¹ Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-108, The Forensic Mental Health System* (Sept. 2011).

Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults:

- Aged 18 years old and older;
- Who have been found by a court to be incompetent to proceed due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.³²

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.³³

Since Fiscal Year 2011-2012, all but two of the persons served in the program were adjudicated incompetent to proceed. The Center currently operates a 16-bed facility at a daily cost of \$284.81 per bed.³⁴

III. Effect of Proposed Changes:

The bill provides an alternative to incarceration for mentally ill defendants who are found incompetent to proceed or not guilty by reason of insanity. Also, veterans' courts and mental health courts will be authorized to transfer cases to other counties on the same basis as that currently afforded to drug court treatment cases.

Treatment-based Mental Health Court Programs

This bill authorizes counties to fund, or a chief judge of a circuit to establish a treatment-based mental health court program. The purpose of the program is for persons in the criminal justice system to receive therapeutic mental health treatment. The treatment approach will start with an individualized recovery plan.

Effective for offenses committed on or after July 1, 2015, the sentencing court may place a defendant into a postadjudicatory treatment-based mental health court program if:

- The Defendant's Criminal Punishment Code scoresheet points total 60 points or less;
- The offense is a nonviolent felony;³⁵
- The defendant is amenable to mental health treatment; and
- The defendant qualifies on the basis of a prior history of a serious mental illness or incompetence to proceed at trial, or a present state of serious mental illness.

This bill encourages coordination among various state agencies, local government, and law enforcement agencies to establish and support these programs.

³² Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis* (Mar. 4 2015) (on file with the Senate Judiciary Committee).

³³ The Florida Senate, *supra* note 31.

³⁴ DCF, *supra* note 32, at 2.

³⁵ A nonviolent felony is defined under the bill as an offense of burglary or trespassing listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony

A defendant is eligible for the program if the court finds a history of a serious mental health diagnosis, prior findings of incompetence, or the presence of serious mental health symptoms. Participation is voluntary.

Treatment may include:

- Pretrial diversion, including specific pretrial mental health conditions of release;
- Postadjudicatory conditions of mental health probation or community control;
- Involuntary outpatient placement and treatment; or
- Conditional release from forensic facilities.

The Department of Corrections is authorized to designate mental health probation officers to support participants.

Problem-solving Courts

Transfer of Cases to a Problem-solving Court

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis, and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs. These three specialty courts are designated by the bill as problem-solving courts.

As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

Participation in a postadjudicatory problem-solving court program may be considered as a mitigating circumstance in the sentencing of a crime.

Veteran Participants in Problem-solving Courts

The population of veterans is expanded for purposes of participating in veterans' court to include veterans who were discharged or released under a general discharge.

In addition to imposing other conditions, the court may require a veteran who is on probation or community control to participate in treatment for the veteran's mental illness, traumatic brain injury, or substance abuse disorder.

Forensic Hospital Diversion Pilot Program

This bill creates the Forensic Hospital Diversion Pilot Program (Program). The purpose of the program is to divert incarcerated defendants who are found mentally incompetent to proceed at trial with criminal prosecution from state forensic mental health treatment facilities to community outpatient treatment. Goals of treatment are restoration of competency and community reintegration.

Under the bill, the Department of Children and Families (DCF) is required to implement the Program in Escambia, Hillsborough, and Miami-Dade counties. The model for the Program is the Miami-Dade Forensic Alternative Center, currently in operation.

Participation in the program is limited to persons who are:

- 18 years of age and older;
- Charged with a second or third degree felony;
- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by the DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in conjunction with the Supreme Court Mental Health and Substance Abuse Committee, to develop educational training for judges in the pilot program counties on the community forensic system.

The DCF is authorized to adopt rules to facilitate to facilitate the provisions of the bill relating to the Program. The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2016. The report must examine the efficiency and cost-effectiveness of the program, including its effect on public safety.

Conditional Release

A circuit court may order a felony defendant on conditional release instead of involuntary commitment to a forensic facility. This bill authorizes county courts to order the conditional release of a misdemeanor defendant solely for the purpose of providing outpatient care and treatment.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

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:

Persons charged with who are declared incompetent to proceed at trial or not guilty by reason of insanity will benefit from this bill. Rather than being committed to a jail setting or a secure forensic facility, these persons may be committed instead to a clinical hospital setting and therefore receive more optimal mental health treatment. Also, county courts may place misdemeanor defendants who are mentally ill on conditional release.

C. Government Sector Impact:**Forensic Hospital Diversion Pilot Program**

This bill replicates the Miami-Dade Forensic Alternative Center Program as a pilot program in 2 other counties.

The program's current contract with the DCF is almost \$1.5 million. Funding this model for three programs will require \$4.5 million. The DCF anticipates that the redirection of \$4.5 million from the department's budget for this program could impact or decrease the provision of services to other department clients. Therefore, the DCF would be unable to absorb the additional costs.

Cost savings may be realized, however, based on the success of the program. The program is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. Doing so may shorten the process, as defendants are less likely to decompensate, or lose competency again from the stress and the less-than-optimal treatment provided in a jail setting. Commitment bed and court cost savings are expected through this bill. Competency is restored more quickly through the program, which requires 103 days on average, than at state facilities, which requires 146 days on average.

In Fiscal Year 2011-12, the average cost for a secure forensic bed was \$333 per day. A bed at the program cost much less, at \$229 a day in 2011-12.³⁶ However, the current cost per bed per day at the program is \$285 a day.³⁷

Conditional Release of Misdemeanor Defendants

Current law only allows circuit courts to release felony defendants who are mentally ill onto conditional release. This bill additionally allows county judges to release misdemeanor defendants who are mentally ill on conditional release. For FY 2012-13, the

³⁶ The Florida Senate, *supra* note 31.

³⁷ DCF, *supra* note 32, at 2.

Office of the State Courts Administrator reported a total of 308,467 misdemeanor filings in the state.³⁸ The current adult population in Florida is 15.6 million, with a serious mental illness rate ranging on average at 5.4 percent.

Multiplying the number of misdemeanor filings, 308,467 by the rate of mental illness, 5.4 percent, 16,657 misdemeanor defendants would be served. Multiplying the number of persons to be served by the average cost of services, which is \$4,462, the total cost is estimated at \$74 million.

Estimated fiscal costs are the cost of the pilot program (\$4.5 million) plus the cost of the conditional release for misdemeanor defendants (\$74 million), for a total estimated cost of almost \$79 million from the provisions of this bill.³⁹

Problem-solving Courts

The Office of State Courts Administrator anticipates additional judicial and court workload from:

- Creating mental health courts, as specialty courts require more extensive hearings and time monitoring than traditional criminal cases. However, cost savings may be realized from lower recidivism and costs of incarceration.
- Expanding the eligibility criteria for veterans. Like other problem-solving courts, veterans' courts require more judicial time than traditional criminal cases. Also, veterans discharged or released under less than honorable conditions are ineligible for benefits from the United States Department of Veterans Affairs. Therefore, the court system would need to access other community resources. However, veterans court is discretionary and expanding the pool of eligible veterans does not require veterans courts to serve this new population.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 910.035, 916.17, 921.0026, 948.01, 948.06, 948.08, 948.16, and 948.21.

This bill creates the following sections of the Florida Statutes: 394.47892 and 916.185.

³⁸ Office of the State Courts Administrator, *County Criminal Overview, FY 2012-13 Statistical Reference Guide*, <http://www.flcourts.org/core/fileparse.php/250/urlt/reference-guide-1213-county-crim.pdf>

³⁹ DCF, *supra* note 28, at 3-6.

⁴⁰ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Mar. 29, 2015).

IX. Additional Information:

- A. **Committee Substitute – Statement of 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.
