

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7113      PCB JDC 15-01      Mental Health Services in the Criminal Justice System

**SPONSOR(S):** Judiciary Committee, McBurney

**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	17 Y, 0 N	Weber	Havlicak
1) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd

### SUMMARY ANALYSIS

Florida's mental health courts, veterans' courts, drug courts, and juvenile delinquency pretrial intervention programs provide pretrial or postadjudicatory alternatives for qualifying offenders involved in the criminal justice system. These courts allow offenders to access programs and treatment options that address the underlying cause of the offender's actions.

This bill:

- Expands the definition of veteran, for the purpose of participation in veterans' court, to include those discharged or released under a general discharge;
- Allows counties to create and fund treatment-based mental health court programs;
- Allows qualifying offenders to transfer to a problem-solving court in another county;
- Creates a Forensic Hospital Diversion Pilot Program;
- Allows judges to require offenders to participate in postadjudicatory treatment-based mental health court programs if certain eligibility requirements are met;
- Allows judges to require qualifying veterans to participate in treatment programs as part of their probation or community control;
- Permits a defendant with a mental illness and who meets qualifying criteria to participate in pretrial mental health court program; and
- Allows a juvenile offender with a mental illness to be admitted to a delinquency pretrial program for treatment purposes and allows a judge to dismiss charges against the juvenile upon the juvenile's successful completion of the program.

This bill contains provisions that may have a negative fiscal impact on the Department of Children and Families, the court system, and local governments. See Fiscal Analysis section.

The bill provides an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Mental Health and Substance Use of Offenders in the Criminal Justice System**

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 illness.<sup>1</sup> Every year there are as many as 125,000 adults with mental illnesses or substance use disorders who require immediate treatment that are arrested and booked into Florida jails.<sup>2</sup> 150,000 children and adolescents are referred to Florida's Department of Juvenile Justice every year, and over 70 percent of those children and adolescents have at least one mental health disorder.<sup>3</sup>

From 2002-2010, the population of inmates with mental illnesses or substance use disorders in Florida increased from 8,000 to 17,000 individuals.<sup>4</sup> By 2020, the number of inmates with these types of disorders is expected to reach more than 35,000, with an average annual increase of 1,700 individuals.<sup>5</sup> Between 2002 and 2010 forensic commitments increased from 863 to 1,549 and are projected to reach nearly 2,800 by 2016.<sup>6</sup>

The majority of individuals with serious mental illnesses or substance use disorders who come in contact with the criminal justice system are charged with minor misdemeanor and low-level felony offenses that are often a direct result of their untreated condition.<sup>7</sup> These individuals are typically poor, uninsured, homeless, minorities, and experiencing co-occurring mental health or substance use disorders.<sup>8</sup>

#### **Florida's Forensic Mental Health Programs**

Qualifying offenders<sup>9</sup>, can be involuntarily committed to state civil<sup>10</sup> and forensic<sup>11</sup> treatment facilities by the Department of Children and Families (DCF), under the authority of Chapter 916. Individuals

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<sup>1</sup> The Florida Senate, *Interim Report 2011-106*, (Oct. 2010). [hereinafter *Senate Interim Report 2011-106*]

<sup>2</sup> *Id.*

<sup>3</sup> Department of Children and Families, *Staff Analysis and Economic Impact, Senate Bill Number 2018* (Mar. 2, 2009). [hereinafter *Staff Analysis, Senate Bill Number 2018*]

<sup>4</sup> *Senate Interim Report 2011-106*.

<sup>5</sup> *Id.* This increase is enough to fill more than 20 correction institutions which essentially equates to one new prison added every year.

<sup>6</sup> *Id.*

<sup>7</sup> *Staff Analysis, Senate Bill Number 2018*.

<sup>8</sup> These individuals often have difficulty accessing resources because of lack of knowledge about available services, lack of funds, criminal record stigma, or a lack of capacity to access the services. *State and County Collaboration: Mental Health and the Criminal Justice System*, National Association of Counties, available at <http://www.ojp.usdoj.gov/newsroom/testimony/2009/statecountycollabo.pdf> [hereinafter *State and County Collaboration*]

<sup>9</sup> Chapter 916, F.S., provides the criteria for defendants who are adjudicated incompetent to proceed. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and that neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being;
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person;
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings have been judge to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and defendant will regain competency to proceed in the reasonably foreseeable future.

<sup>10</sup> A "civil facility" is a mental health facility established within DCF or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and those defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility. Section 916.106(4), F.S.

committed to the custody of DCF are usually treated at one of the three forensic mental health treatment facilities (Florida State Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami). In 2011, Florida spent more than \$210 million each year on 1,700 beds, serving approximately 3,000 individuals in forensic treatment; the amount spent on those beds alone was one third of all adult mental health dollars and two thirds of all state mental health hospital dollars.<sup>12</sup>

The cost to local governments to house these individuals who are arrested and booked into Florida jails is estimated to be over \$500 million.<sup>13</sup> Another \$600 million is spent each year housing individuals with mental illnesses in state prisons and forensic treatment facilities.<sup>14</sup> It has been projected that the number of state prison beds serving inmates with mental illnesses will more than double from 17,000 to 35,000 by 2020 and will be accompanied with capital and operating costs of more than \$3.6 billion for the new beds alone.<sup>15</sup>

### **Miami-Dade Forensic Alternative Center and Community-Based Mental Health System**

DCF implemented a pilot program, the Miami-Dade Forensic Alternative Center (MD-FAC), in the Eleventh Judicial Circuit in the fall of 2009.<sup>16</sup> The program was established to demonstrate the feasibility of diverting those individuals with mental illness who had been deemed incompetent to proceed to trial from state hospital placement to community-based treatment and competency restoration services.<sup>17</sup>

Between August 2009 and August 2010, a total of 111 individuals were accepted and admitted to the program.<sup>18</sup> As of 2010, 38 individuals either stepped down from forensic commitment or completed the program; of those, 27 remained actively linked to the MD-FAC program and 11 did not.<sup>19</sup> Of the 27 individuals who remained actively linked to the MD-FAC program and the services it provides, 19 individuals did not recidivate.<sup>20</sup> Of those individuals, only one individual was charged with committing a new offense (misdemeanor, petit theft), while 8 were rebooked into jail for non-compliance with conditions of release.<sup>21</sup>

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.<sup>22</sup>

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<sup>11</sup> A “forensic facility” is a separate and secure facility established within DCF or an agency to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from nonforensic residents. Section 916.106(10), F.S.

<sup>12</sup> *Senate Interim Report 2011-106*.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* In order to be eligible for admission to MD-FAC, an individual must be charged with a less serious offense (ex. second or third degree felony). Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report*, (Aug. 2010) (on file with the House Judiciary Comm.).

<sup>18</sup> *Pilot Program Status Report* at 3.

<sup>19</sup> *Id.* at 5-6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* The individuals who remained linked to MD-FAC services accounted for 11 jail bookings and spent a total of 85 days in jail after stepping down from forensic commitment; in contrast, of the 11 individuals who did not remain linked with the program, 9 were rebooked for a total of 23 books resulting from new offenses and 15 resulting from technical violations. The 9 individuals who recidivated accounted for 1,435 days in jail since stepping down from forensic commitment. *Id.*

- The burden on local jails has been reduced, as individuals served by MD-FAC are not returned to jail upon restoration of competency.<sup>23</sup>
- Because individuals are not returned to jail, it prevents the individual's symptoms from worsening while incarcerated, possibly requiring readmission to state treatment facilities.<sup>24</sup>
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.<sup>25</sup>
- 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.<sup>26</sup>
- 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.<sup>27</sup>

## Florida's Veterans' Courts

Veterans' courts are specialty courts that serve veterans and active duty servicemembers who are involved in the criminal justice system and have a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.<sup>28</sup>

Section 394.47891, F.S., allows each circuit's chief judge to establish veterans' courts, and as of January 2015, Florida has 21 veterans' courts, including 7 courts that receive state general revenue funding. For Fiscal Year 2014-15, 7 counties in Florida received state general revenue funding to create or maintain veterans' courts.<sup>29</sup> Because Florida's veterans' courts are statutorily required to serve only servicemembers and veterans who have been discharged from military service under honorable conditions, court participants are generally eligible to receive services through the U.S. Department of Veterans Affairs (VA) and do not require court funding for the majority of services.<sup>30</sup>

<b>Comparison of competency restoration services provided forensic treatment facilities and MD-FAC (average number of days year to date, FY 2009-10):</b>	<b>Forensic facilities</b>	<b>MD-FAC</b>	<b>Difference*</b>
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%)

*Id.* “[I]ndividuals 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.*

However, those individuals diverted to MD-FAC have to meet certain criteria, which may result in the less mentally ill or individuals with less serious charges to go to MD-FAC. Additionally, the state hospitals accept individuals from across the mental health spectrum. This variance may be a contributing factor in the above comparison.

<sup>23</sup> MD-FAC program staff provides ongoing assistance, support and monitoring following an individual's 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.*

<sup>24</sup> Of the 44 individuals referred to MD-FAC between 2009 and 2010, 23% had one or more previous admissions to a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

<sup>25</sup> *Senate Interim Report 2011-106* at 9.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *State-Funded Veterans' Courts in Florida*, The Florida Legislature's Office of Program Policy Analysis and Government Accountability (Jan. 30, 2015) (on file with the House Judiciary Committee). [hereinafter *State-Funded Veterans' Courts in Florida*]

<sup>29</sup> Clay, Okaloosa, Pasco, and Pinellas Counties received \$150,000 each/\$600,000 total in Recurring General Revenue, Duval and Orange Counties received \$200,000 each/\$400,000 total in Recurring General Revenue, and Alachua County received \$150,000 total in Recurring General Revenue.

<sup>30</sup> Section 1.01, F.S., defines a veteran as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions,

Florida's veterans' and servicemember courts use several factors to determine eligibility. First, a veteran must fit into the statutory definition of a veteran or servicemember.<sup>31</sup> Because of the statutory definition of veteran, the veteran must have a military service discharge under honorable conditions. Second, the veteran must have a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem. Third, he or she must have committed a misdemeanor or felony crime that is accepted in veterans' court.<sup>32</sup> If the veteran meets these eligibility requirements and agrees to participate, the case is sent to the state attorney for approval. Depending on availability, participants may be placed in either pretrial or post-adjudication diversion programs. Pretrial diversion is structured such that the charges may be dismissed or reduced when the participant completes the program. The post-adjudication track corresponds with probation supervision and may allow the participant to join in a treatment program instead of being incarcerated.<sup>33</sup>

Individuals who commit a qualifying offense listed in section 948.06(8)(c), F.S., cannot be admitted into veterans' courts.<sup>34</sup> 52 percent of the participants in Florida's state-funded veterans' courts committed felonies, primarily third degree felonies; the most common of which were grand theft, burglary, felony battery, and drug possession.<sup>35</sup> 48 percent of the participants committed first and second degree misdemeanors; the most common of which were battery and driving under the influence.<sup>36</sup>

As of October 1, 2014, the seven state-funded courts had 265 participants and between July 2013 and October 2014, 45 participants graduated from state-funded courts.<sup>37</sup> It generally takes 12 to 18 months to successfully complete veterans' court. The number of graduates is expected to increase over time because of this.<sup>38</sup>

## Mental Health Courts

As of October 2014, there were 26 mental health courts operating in 16 counties across the state of Florida.<sup>39</sup> Mental health courts hold offenders accountable while connecting them to the treatment services necessary to address their mental illness.<sup>40</sup> Mental health courts typically share the following goals:

- To improve public safety by reducing criminal recidivism;

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notwithstanding any action by the U.S. Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. There are five types of discharge: honorable, general discharge under honorable conditions (general), other than honorable, bad conduct, and dishonorable. *State-Funded Veterans' Courts in Florida*. Typically, veterans who received honorable discharges or general discharges are eligible for VA benefits while veterans who received other than honorable, bad conduct, or dishonorable discharges are not. *Id.*

<sup>31</sup> See *supra* note 30 for the definition of veteran. Section 250.01, F.S., defines a servicemember as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Force.

<sup>32</sup> Eligibility requirements can be found in *State-Funded Veterans' Courts in Florida* at 2-3. Florida Statutes prohibit individuals charged with certain types of violent crimes from admission into veterans' court. See Section 948.06(8)(c), F.S. Each veterans' court also has the discretion to limit veteran participation based on the type or nature of the alleged crime or crime committed. *State-Funded Veterans' Courts in Florida* at 3.

<sup>33</sup> *State-Funded Veterans' Courts in Florida* at 3.

<sup>34</sup> *Id.* Section 948.06(8)(c) lists over 19 "qualifying offenses" that would preclude an individual's admission into veterans' court.

<sup>35</sup> *State-Funded Veterans' Courts in Florida* at 5. Per s. 775.081, F.S., felonies of the third degree are the lowest degree of felony. Per s. 775.082, F.S., persons convicted of a third degree felony can be sentenced to a term of imprisonment not exceeding 5 years.

<sup>36</sup> *Id.* at 5. Per s. 775.082, F.S., a person who has been convicted of a misdemeanor of the first degree may be sentenced to a term of imprisonment not exceeding one year, and persons convicted of a misdemeanor of the second degree may be sentenced to a term of imprisonment not exceeding 60 days.

<sup>37</sup> *State-Funded Veterans' Courts in Florida* at 3.

<sup>38</sup> *Id.*

<sup>39</sup> FLORIDA COURTS, *Mental Health Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/mental-health-courts.stml> (last visited Mar. 16, 2015).

<sup>40</sup> *Id.*

- To improve the quality of life of people with mental illnesses and to increase their participation in effective treatment; and
- To reduce court- and corrections-related costs through administrative efficiencies and often by providing an alternative to incarceration.<sup>41</sup>

However, there is no statutory framework which codifies these mental health courts and, as a result, eligibility, program requirements, and other processes differ among the courts.

For example, in order to be eligible to participate in Alachua County's Mental Health Court, a defendant must be diagnosed with a mental illness or developmental disability and be arrested for a misdemeanor or criminal traffic offense.<sup>42</sup> However, in order to be eligible to participate in Nassau County's Mental Health Court, the defendant must have an Axis I mental health diagnosis<sup>43</sup> and have been charged with non-violent misdemeanors.<sup>44</sup> Nassau County's Mental Health Court may also consider third degree felony convictions.<sup>45</sup>

Additionally, anyone can refer a person to the Mental Health Court in Nassau County<sup>46</sup>; whereas only judges, private attorneys, public defenders, state attorneys, or pretrial officers can refer a person to Okaloosa County's Mental Health Court.<sup>47</sup>

## Effects of the Bill

### Section 1

Section 1 amends s. 394.47891, F.S., to include veterans who were discharged or released under a general discharge as eligible veterans for a Military Veterans and Servicemembers Court Program.

### Section 2

Section 2 creates s. 394.47892, F.S., which allows each county to fund a treatment-based mental health court program under which defendants in the justice system assessed with a mental illness will be processed respective to the severity of their identified mental illness; however, if a county chooses to fund a treatment-based mental health court program, the county must secure funding from sources other than the state for costs not otherwise assumed by the state.

The bill will require that entry into any pretrial treatment-based mental health court program shall be voluntary and any entry into any postadjudicatory treatment-based mental health court program must be based upon the sentencing court's assessment of:

<sup>41</sup> *Id.*

<sup>42</sup> OFFICE OF THE STATE ATTORNEY EIGHTH JUDICIAL CIRCUIT, *Alachua County Mental Health Court*, <http://sao8.org/Mental%20Health.htm> (last visited Mar. 16, 2015). Those charged with domestic violence, driving under the influence, and sexual offenses are excluded from the program. However, Alachua County does provide certain exemptions for:

- Defendants charged with domestic violence involving parents and children or siblings may be admitted if the court approves;
- Defendants charged with simple battery, if the victim consents; and
- Defendants who violate county court probation with the consent of the county court judge to whom the case is assigned. *Id.*

<sup>43</sup> Axis I is the top-level of the Diagnostic and Statistical Manual of Mental Disorders multiaxial system of diagnosis. *Axis I*, PSY.WEB (May 15, 2014), [http://www.psyweb.com/DSM\\_IV/jsp/Axis\\_I.jsp](http://www.psyweb.com/DSM_IV/jsp/Axis_I.jsp). Axis I diagnoses are the most widely recognized (ex., schizophrenic episode, panic attack, major depressive episode, dementia, eating disorders, mood disorders, etc.). *Id.*

<sup>44</sup> NASSAU COUNTY MENTAL HEALTH COURT, *Eligibility And Referral*, <http://www.ncmhc.org/default.cfm?page=eligibility> (last visited Mar. 16, 2015).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* Nassau County's Mental Health Court website states that anyone can refer a person to that court. Police, corrections staff, attorneys, friends, family members, community behavior health providers, judges, and court staff may do so by contacting the Program Director and indicating that person's case may be eligible. *Id.*

<sup>47</sup> FIRST JUDICIAL CIRCUIT OF FLORIDA, *Mental Health Court*, <http://www.firstjudicialcircuit.org/programs-and-services/mental-health-court> (last visited Mar. 16, 2015).

- The defendant's criminal history;
- The defendant's mental health screening outcome;
- The defendant's amenability to the services of the program;
- The defendant's total sentence points;
- The recommendation of the state attorney and the victim, if any; and
- The defendant's agreement to enter the program.

Section 2 also creates s. 394.47892(5), F.S., which, contingent on annual appropriation by the Legislature, commands each judicial circuit to establish, at a minimum, one coordinator position for the treatment-based mental health court program and establishes the coordinator's duties and responsibilities.

The bill requires each circuit to report sufficient client-level and programmatic data to the Office of State Courts Administrator annually for the purposes of program evaluation. Client-level data includes:

- Primary offenses that resulted in the mental health court referral or sentence;
- Treatment compliance;
- Completion status and reasons for failure to complete;
- Offenses committed during treatment and sanctions imposed, frequency of court appearances; and
- Units of service.

Program level data includes:

- Referral and screening procedures;
- Eligibility criteria;
- Type and duration of treatment offered; and
- Residential treatment resources.

Finally, the bill authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based mental health court program and sets out who can serve on such a committee.

### *Section 3*

Section 3 amends s. 910.035, F.S., to include case transfer from one county to another because of the defendant's participation in a problem-solving court.

The bill defines the term problem-solving court as a drug court, military veterans and servicemembers court, mental health court, or a delinquency pretrial intervention court program and allows for a case to be transferred to a county other than that in which the charge arose if the following conditions are met:

- If the person is eligible for participation in a problem-solving court, upon request by the person or a court and if the defendant agrees to the transfer, the case shall be transferred to a county other than that in which the charge arose;
  - The authorized representative of the trial court must consult with the authorized representative of the problem-solving court and both must agree to the transfer;
- If all parties agree, the trial court shall enter a transfer order directing the case transferred to the county that has accepted the defendant into its problem-solving court;
- The appropriate documentation must be provided whether it is pretrial or post-trial admission to a problem-solving court; and
- After the transfer to the problem-solving court takes place, the clerk shall set the matter to hearing, and the court shall ensure the defendant's entry into the problem-solving court.

If the defendant successfully completes the problem-solving court, the case shall be disposed of; if not, the case shall be disposed of within the guidelines of the Criminal Punishment Code.

### *Section 4*

Section 4 amends the definition of "Court" in s. 916.106, F.S., to include the county court as provided in s. 916.17, F.S.

## Section 5

Currently, only circuit court judges with defendants before them charged with felony offenses may order the defendant to conditional release with an approved plan of providing appropriate outpatient care and treatment in lieu of involuntary commitment for offenders with mental illnesses. Section 5 amends s. 916.17, F.S., to authorize county court judges to order conditional release for this purpose for defendants charged with misdemeanor offenses.

## Section 6

Section 6 creates s. 916.185, F.S., which creates a Forensic Hospital Diversion Pilot Program to serve eligible individuals who have mental illnesses or co-occurring mental illnesses and substance use disorders who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. The program is designed to provide competency-restoration and community-reintegration services in either a locked residential treatment facility, when appropriate, or a community-based facility based upon consideration of public safety, the needs of the defendant, and available resources. Additionally, the section provides DCF may implement the Pilot Program in Escambia County, Hillsborough County, and Dade County that mirrors the MD-FAC. The bill provides that DCF and the corresponding judicial circuits may implement this pilot program if recurring resources are currently available to support the program.

## Section 7

Section 7 amends s. 948.01, F.S., which allows a court to place a defendant, who committed an offense on or after July 1, 2015, into a postadjudicatory treatment-based mental health court program as a condition of probation or community control if:

- The offense is a nonviolent felony<sup>48</sup>;
- The defendant is amenable to mental health treatment;
- The defendant meets the requirements for mental health courts found in s. 394.47892(4)(a), F.S.<sup>49</sup>; and
- The defendant agrees to enter the program.

The bill authorizes the Department of Corrections to establish designated mental health probation officers to support individuals under supervision of the mental health court.

## Section 8

Section 8 amends s. 948.06, F.S., which allows a court to order a defendant, whose offense was committed on or after July 1, 2015, to successfully complete a postadjudicatory treatment-based mental health court program or military veterans and servicemembers court program if:

- The offender has violated his or her community control or probation;
- The underlying offense is a nonviolent felony<sup>50</sup>;

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<sup>48</sup> The bill defines a “nonviolent felony” as a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Defendants charged with resisting an officer with violence under s. 843.01, F.S., battery on a law enforcement officer under s. 784.07, F.S., or aggravated assault may participate in the mental health court program if the court so orders after the victim has been given his or her right to provide testimony or written statement to the court as provided in s. 921.143, F.S.

<sup>49</sup> Entry into any postadjudicatory treatment-based mental health court program as a condition of probation or community control must be based upon the sentencing court’s assessment of:

- The defendant’s criminal history;
- The defendant’s mental health screening outcome;
- The defendant’s amenability to the services of the program;
- The defendant’s total sentence points;
- The recommendation of the state attorney and the victim, if any; and
- The defendant’s agreement to enter the program.

<sup>50</sup> See definition of nonviolent felony, *supra* note 48.



- The offender is amenable to the services of postadjudicatory treatment-based mental health court program;
- The offender agreed to participate in the program after the court explains its purpose; and
- The offender is otherwise qualified.<sup>51</sup>

If the offender fails to comply with the terms of the program or the offender's sentence is completed, the case is returned to the sentencing court.

### Section 9

A person who is charged with a felony, other than a felony listed in s. 948.06(8)(c),<sup>52</sup> and who is identified as a veteran under s. 1.01, F.S., is eligible for voluntary admission into a pretrial veterans' treatment intervention program if the veteran or service member suffers from a:

- Military service-related mental illness;
- Traumatic brain injury;
- Substance abuse disorder; or
- Psychological problem.

Section 9 amends s. 948.08, F.S., to include veterans who were discharged or released under a general discharge within the definition of veteran, as persons eligible for voluntary admission into a pretrial veterans' treatment intervention program.

Section 9 amends s. 948.08, F.S., which states that if a person, who is identified as having a mental illness and who has not previously been convicted of a felony, is charged with:

- A nonviolent felony that includes a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.;
- Resisting an officer with violence under s. 843.01, if the law enforcement officer and state attorney consent to the defendant's participation;
- Battery on a law enforcement officer under s. 784.07, if the law enforcement officer and state attorney consent to the defendant's participation; or
- Aggravated assault where the victim and state attorney consent to the defendant's participation

is eligible for voluntary admission into a pretrial mental health court program, subject to approval by the chief judge of the circuit for a period to be determined by the risk and needs assessment of the defendant.

If, at the end of the program, the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or order that the charges revert to normal channels for prosecution. If, at the end of the program, the court finds that the defendant has successfully completed the pretrial program, the court shall dismiss the charges.

### Section 10

A person who is charged with a misdemeanor, and who is identified as a veteran under s. 1.01, F.S., is eligible for voluntary admission into a pretrial veterans' treatment intervention program if the veteran or service member suffers from a:

- Military service-related mental illness;
- Traumatic brain injury;
- Substance abuse disorder; or
- Psychological problem.

<sup>51</sup> See factors to determine qualification, *supra* note 49.

<sup>52</sup> s. 948.06(8)(c) lists over 19 "qualifying offenses" that would preclude a defendant's participation in a pretrial veterans' treatment intervention program.

Section 10 amends s. 948.16, F.S., to include veterans who were discharged or released under a general discharge within the definition of veteran, as persons eligible for voluntary admission into a pretrial veterans' treatment intervention program.

The bill also to allows a defendant, who is identified as having a mental illness and who is charged with a misdemeanor, to voluntarily enter a misdemeanor pretrial mental health court program, upon the motion of either party or the court, subject to the approval of the chief judge of the circuit.

Section 10 requires any public or private entity providing a pretrial mental health program to contract with the county or appropriate government entity.

#### *Section 11*

Section 11 amends s. 948.21, F.S., to allow a court to impose a condition requiring a probationer or community controllee, whose crime was committed on or after July 1, 2015, who is a veteran (including veterans who were discharged or released under a general discharge) or servicemember, and who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem to participate in a treatment program capable of treating the veteran's mental illness, injury, disorder or problem.

#### *Section 12*

Section 12 amends s. 985.345, F.S., which allows a child, who is identified as having a mental illness and who has not previously been adjudicated for a felony, to voluntarily be admitted to a delinquency pretrial mental health court program, upon motion of either party or the court, subject to approval by the chief judge of the circuit, if the child is charged with:

- A misdemeanor;
- A nonviolent felony<sup>53</sup>;
- Resisting an officer with violence, if the law enforcement officer and state attorney consent to the child's participation;
- Battery on a law enforcement officer, if the law enforcement officer and state attorney consent to the child's participation; or
- Aggravated assault, if the victim and state attorney consent to the child's participation.

If, at the end of the program, the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue if resources and funding are available or order the charges revert to normal channels for prosecution. However, if the court finds that the child has successfully completed the delinquency pretrial intervention program, the court may dismiss the charges against the child and the child may subsequently have his or her arrest record and plea of nolo contendere expunged as to the charges.

Section 12 also requires any public or private entity providing a pretrial mental health program under this section to contract with the county or appropriate government entity.

#### *Section 13*

Section 13 provides an effective date of July 1, 2015.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 394.47891, F.S., relating to military veterans and servicemembers court programs.

Section 2 creates 394.47892, F.S., relating to treatment-based mental health court programs.

Section 3 amends s. 910.035, F.S., relating to transfer from county for plea and sentence.

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<sup>53</sup> For the purposes of this subsection, the term "nonviolent felony" means a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as define din s. 776.08.

Section 4 amends s. 916.106, F.S., relating to definitions.

Section 5 amends s. 916.17, F.S., relating to conditional release.

Section 6 creates s. 916.185, F.S., relating to Forensic Hospital Diversion Pilot Program.

Section 7 amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 8 amend 948.06, F.S., relating to violation of probation or community control.

Section 9 amends s. 948.08, F.S., relating to pretrial intervention program.

Section 10 amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program.

Section 11 amends s. 948.21, F.S., relating to condition of probation or community control; military servicemembers and veterans.

Section 12 amends s. 985.345, F.S., relating to delinquency pretrial intervention program.

Section 13 provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

This bill expands the definition of the term veteran to include veterans who were discharged or released under a general discharge for the purposes of eligibility to participate in problem-solving courts. This may increase the number of veterans eligible to participate in these problem-solving courts and programs, which may have a negative fiscal impact on existing or new problem-solving courts and/or related programs.

The bill provides DCF may implement the Forensic Hospital Diversion Pilot Program. DCF estimates that it will cost approximately \$4,788,000 if DCF were to fund all three pilot programs. The bill provides that DCF and the corresponding judicial circuits may implement this pilot program if recurring resources are currently available to support the program. If DCF chooses to implement this program, it may require DCF to reallocate funding currently used to provide services to adults in community mental health programs and forensic mental health programs. The redirection of \$4,788,000 from existing resources could impact the availability of resources to provide services to adults in both community and forensic mental health programs.

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

1. Revenues:

None.

2. Expenditures:

This bill expands the definition of the term veteran to include veterans who were discharged or released under general discharge for the purposes of eligibility to participate in problem-solving courts. This may increase the number of veterans eligible to participate in these problem-solving courts and programs, which may have a negative fiscal impact on local governments that choose to fund problem-solving courts and/or related programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**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:

Section 6 of the bill creates s. 916.185, F.S, authorizing the creation of a Forensic Hospital Diversion Pilot Program. In subsection (6) of this section, DCF is given authority to adopt rules under ss. 120.536(1) and 120.54, F.S., to administer this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 7, 2015, the Justice Appropriations Subcommittee adopted one amendment to the bill and reported the bill favorably as amended. The amendment provides that DCF and the corresponding judicial circuits may implement Forensic Hospital Diversion Pilot Program if recurring resources are currently available to support the program.

This analysis is drafted to the bill as passed by the Justice Appropriations Subcommittee.