

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 439 Mental Health Services in Criminal Justice System

SPONSOR(S): Appropriations Committee; Children, Families & Seniors Subcommittee; McBurney & others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	White	White
2) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	McElroy	Brazzell
3) Appropriations Committee	25 Y, 0 N, As CS	Smith	Leznoff
4) Judiciary Committee	17 Y, 0 N, As CS	White	Havlicak

SUMMARY ANALYSIS

To address mental health issues in the criminal justice system, Florida has multiple programs, some of which operate on a statewide basis, e.g., state-administered forensic and civil mental health programs, and others which are only available in certain counties or circuits, e.g., mental health courts and veterans' courts. This bill amends statute governing these programs by:

- Creating the Forensic Hospital Diversion Pilot Program which is to be modeled after the Miami-Dade Forensic Alternative Center.
- Allows the Department of Children and Families to implement the pilot program in Duval, Broward, and Miami-Dade Counties, if existing recurring resources are available.
- Authorizing county court judges to order misdemeanants to involuntary outpatient placement if the misdemeanant meets the criteria for involuntary outpatient placement under s. 394.4655, F.S.;
- Creating statutory authority for each county to establish a mental health court program (MHCP) that provides pretrial intervention and post-adjudicatory programs.
- Authorizing courts to order adult offenders with mental illnesses to participate in pretrial intervention and post-adjudicatory programs and to admit juvenile offenders with mental illnesses into delinquency pretrial MHCPs.
- Expanding the definition of "veteran," for the purpose of eligibility for veterans' court, to include veterans who were discharged or released under a general discharge.
- Expanding the statutory authorization for certain offenders to transfer to a "problem-solving court" in another county to also include transfer to delinquency pretrial intervention programs.

The bill makes conforming changes to child welfare statutes to incorporate references to mental health treatment and mental health courts.

This bill has an indeterminate fiscal impact on local revenues and expenses.

This bill has an indeterminate fiscal impact on state expenditures.

The bill takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

On any given day in Florida, it is estimated that there are 17,000 prison inmates, 15,000 jail detainees, and 40,000 individuals under correctional supervision who experience serious mental illness.¹ Each year, as many as 125,000 adults with mental illnesses or substance use disorders, who require immediate treatment, are arrested and booked into Florida jails.² Further, of the 150,000 juveniles who are referred to Florida's Department of Juvenile Justice each year, more than 70 percent have at least one mental health disorder.³

Between 2002 and 2010, the population of inmates with mental illnesses or substance use disorders in Florida increased from 8,000 to 17,000 inmates.⁴ By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000, with an average annual increase of 1,700 individuals.⁵ Between 2002 and 2010 forensic commitments increased from 863 to 1,549 and are projected to reach 2,800 by 2016.⁶

The majority of individuals with serious mental illnesses or substance use disorders who become involved 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.⁷ These individuals are typically poor, uninsured, homeless, minorities who are experiencing co-occurring mental health or substance use disorders.⁸

To address mental health issues in the criminal justice system, Florida has multiple programs, some of which operate on a statewide basis, e.g., forensic and civil mental health programs, and others which are only available in certain counties or circuits, e.g., mental health courts and veterans' courts,

State Forensic System -- Mental Health Treatment for Criminal Defendants

Chapter 916, F.S., governs the state forensic system, which 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. Offenders who are charged with a felony and adjudicated incompetent to proceed⁹ and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil¹⁰ and forensic¹¹ treatment facilities by the circuit court,^{12, 13} or in lieu of such commitment, may be

¹ The Florida Senate, *Forensic Hospital Diversion Pilot Program, Interim Report 2011-106*, (Oct. 2010).

² *Id.* at p. 1.

³ Florida Department of Children and Families, Agency Analysis of 2009 Senate Bill 2018 (Mar. 2, 2009).

⁴ The Florida Senate, *supra* note 1, at 1.

⁵ *Id.*

⁶ *Id.* at p. 2.

⁷ *Id.*

⁸ *Id.*

⁹ "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." s. 916.12(1), F.S.

¹⁰ A "civil facility" is: a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. s. 916.106(4), F.S.

¹¹ A "forensic facility" is a separate and secure facility established within DCF or APD 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 who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents. s. 916.106(10), F.S.

¹² "Court" is defined to mean the circuit court. s. 916.106, F.S.

released on conditional release by the circuit court if the person is not serving a prison sentence.¹⁴ Conditional release is release into the community accompanied by outpatient care and treatment.¹⁵ The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.¹⁶

The Department of Children and Families (DCF) oversees two state-operated forensic 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.

Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The intent of the program is to serve offenders who have 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. The MDFAC serves adults:

- Age 18 years or 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.¹⁷

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community. It currently operates its 16-bed facility for a daily cost of \$284.81 per bed.¹⁸

Between August 2009 and August 2010, a total of 111 individuals were accepted and admitted to the program.¹⁹ As of 2010, 38 individuals either stepped down from forensic commitment or completed the program. Of those individuals, 27 remained actively linked to the MDFAC and 11 did not.²⁰ Of the 27 individuals, 19 individuals did not recidivate.²¹ Of recidivating individuals, only one individual was charged with committing a new offense (misdemeanor petit theft), while seven were rebooked into jail for non-compliance with conditions of release.²²

As a result of the MDFAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities. The MDFAC on average restored competency within 99.3 days, while forensic treatment facilities required an average of 138.9 days.²³
- The burden on local jails has been reduced, as individuals served by MDFAC are not returned to jail upon restoration of competency.²⁴

¹³ ss. 916.13, 916.15, and 916.302, F.S.

¹⁴ s. 916.17(1), F.S.

¹⁵ *Id.*

¹⁶ s. 916.16(1), F.S.

¹⁷ Florida Department of Children and Families, Agency Analysis of 2015 House Bill 7113, p. 2 (Mar. 19, 2015) .

¹⁸ *Id.* at 2 and 4.

¹⁹ Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report*, (Aug. 2010) (on file with the House Judiciary Comm.).

²⁰ *Id.* at 5-6.

²¹ *Id.*

²² *Id.* The individuals who remained linked to MDFAC 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, nine were rebooked for a total of 23 bookings resulting from new offenses and 15 resulting from technical violations. The nine individuals who recidivated accounted for 1,435 days in jail since stepping down from forensic commitment. *Id.*

²³ *Id.* “[I]ndividuals enrolled in MDFAC 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 MDFAC 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.* It should be noted, however, that individuals diverted to MDFAC have to meet certain criteria, which may result in participation in the program by individuals who present with less severe cases of mental illness or those with less serious charges going to MDFAC as compared to the population placed in state hospitals.

- As individuals are not returned to jail, the individual's symptoms are prevented from worsening while incarcerated, which could possibly require readmission to state treatment facilities.²⁵
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.²⁶
- 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.²⁷
- It is standard practice at MDFAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.²⁸

Mental Health Courts

Currently, the establishment of mental health courts in this state is not addressed in statute. Such courts, however, have been created in the majority of local jurisdictions for purposes of holding offenders accountable while connecting them to the treatment services necessary to address their mental illness.²⁹ Mental health courts typically share the following goals:

- To improve public safety by reducing criminal recidivism;
- 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.³⁰

As of March 2015, there were 27 mental health courts operating in 15 of the state's 20 judicial circuits.³¹ Due to the fact that there is no statutory framework for these courts, eligibility criteria, program requirements, and other processes differ throughout the state. For example, 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 certain misdemeanor or criminal traffic offenses.³² Distinguishably, to be eligible to participate in Duval County's and Nassau County's Mental Health Courts, a defendant must have a mental health diagnosis of bipolar, schizophrenia, or anxiety and have been arrested for a misdemeanor or third or second degree felony.³³

Veterans' Courts

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of such courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."³⁴

²⁴ MDFAC 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.*

²⁵ Of the 44 individuals referred to MDFAC between 2009 and 2010, 23 percent had one or more previous admissions to a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

²⁶ The Florida Senate, *supra* note 1, at 9.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Florida Courts, *Mental Health Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/mental-health-courts.shtml> (last visited Nov. 14, 2015).

³⁰ *Id.*

³¹ *Id.*

³² Office of the State Attorney Eighth Judicial Circuit, *Alachua County Mental Health Court*, <http://sao8.org/Mental%20Health.htm> (last visited Nov. 14, 2015).

³³ Fourth Judicial Circuit Courts of Florida, *Duval County Mental Health Court*, <http://www.jud4.org/Court-Programs/Drug,-Mental-Health,-and-Veterans-Treatment-Courts/Mental-Health-Court-Programs/Duval-County-Mental-Health-Court.aspx> (last visited Nov. 14, 2015); Fourth Judicial Circuit Courts of Florida, *Nassau County Mental Health Court*, <http://www.jud4.org/Court-Programs/Drug,-Mental-Health,-and-Veterans-Treatment-Courts/Mental-Health-Court-Programs/Nassau-County-Mental-Health-Court.aspx> (last visited Nov. 14, 2015).

³⁴ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, (Jan. 30, 2015).

Pursuant to s. 394.47891, F.S., the chief judge in each judicial circuit of this state is authorized to establish a Military Veterans and Servicemembers Court Program (hereafter referred to as “veterans’ courts”). To be eligible for veterans’ court, an individual must have been charged with a criminal offense, must have a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and must be a:

- Servicemember, which means “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 Forces.”³⁵
- Veteran, which means “a person who served in the active military, naval, or air service and who was **discharged or released under honorable conditions** only or who later received an upgraded discharge under honorable conditions....”^{36, 37} Typically, veterans who receive honorable or general discharges are eligible for VA benefits while veterans who receive dishonorable, bad conduct, or dishonorable discharges are not.³⁸

A servicemember or veteran who meets the qualifications and agrees to participate may be placed in a pretrial diversion program if the offense charged is a misdemeanor or a felony other than a felony listed in s. 948.06(8)(c), F.S.,^{39, 40} or a post-adjudicatory program for crimes committed on or after July 1, 2012.⁴¹

For a pretrial diversion program, a treatment intervention team must develop an individualized coordinated strategy for the servicemember or veteran which must be presented to the servicemember or veteran before he or she agrees to enter the program. The court retains jurisdiction in the case throughout the pretrial intervention period. 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 may order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.⁴²

For a post-adjudicatory program, the court may require a servicemember or veteran to participate in a treatment program capable of treating his or her mental illness, traumatic brain injury, substance abuse disorder, or psychological program as a condition of probation or community control.⁴³

As of March 2015, Florida had 22 veterans’ courts operating in 13 circuits,⁴⁴ which includes courts in eight counties that received state general revenue funding for Fiscal Year 2015-2016.⁴⁵ Six counties in Florida received state general revenue funding for Fiscal Year 2014-2015, for veterans’ courts.⁴⁶

³⁵ s. 250.01(19), F.S.

³⁶ s. 1.01(14), F.S. (emphasis added).

³⁷ ss. 394.47891, 948.08(7), 948.16(2)(a), and 948.21, F.S.

³⁸ Office of Program Policy Analysis & Government Accountability, *supra* note 34.

³⁹ ss. 948.08(7) and 948.16(2), F.S.

⁴⁰ The disqualifying offenses listed in s. 948.06(8)(c), F.S., include: (a) kidnapping, false imprisonment of a child under the age of 13, or luring or enticing a child; (b) murder, felony murder, or manslaughter; (c) aggravated battery; (d) sexual battery; (e) certain lewd or lascivious offenses; (f) robbery, carjacking, or home invasion robbery; (g) sexual performance by a child; (h) computer pornography, transmission of child pornography, or selling or buying of minors; (i) poisoning food or water; (j) abuse of a dead human body; (k) certain burglary offenses; (l) arson; (m) aggravated assault; (n) aggravated stalking; (o) aircraft piracy; (p) unlawful throwing, placing, or discharging of a destructive device or bomb; and (q) treason..

⁴¹ s. 948.21, F.S.

⁴² ss. 948.08(7)(b) and (c), and 948.16(2) and (3), F.S.

⁴³ s. 948.21, F.S.

⁴⁴ Florida Courts, *Veterans Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/veterans-court.stml> (last visited Nov. 14, 2015).

⁴⁵ The following eight counties were appropriated recurring general revenue funds for Fiscal Year 2015-2016: Clay, Okaloosa, Pasco, Pinellas, and Escambia Counties each received \$150,000; Leon County received \$125,000; and Duval and Orange Counties each received \$200,000. Senate Bill 2500-A (2015), Specific Appropriation 3169.

⁴⁶ The following six counties were appropriated recurring general revenue funds for Fiscal Year 2014-2015: Clay, Okaloosa, Pasco, and Pinellas Counties each received \$150,000; and Duval and Orange Counties each received \$200,000. House Bill 5001 (2014), Specific Appropriation 3193.

According to data from a January 2015, research memorandum drafted by the Office of Program Policy Analysis and Government Accountability, 45 participants graduated from the state-funded veterans' courts between July 2013 and October 2014. Fifty-two percent of the participants had felony charges, mainly third-degree felony offenses for grand theft, burglary, felony battery, and drug possession.⁴⁷ The remaining 48 percent had first and second degree misdemeanor charges, the most common of which were battery and driving under the influence. Sixty-two percent of the participants had a dual diagnosis of mental health issues and substance abuse.⁴⁸

Transfer for Participation in a Problem-Solving Court

A "problem-solving court" is defined to mean specified drug courts, veterans' courts pursuant to ss. 394.47891, 948.08, 948.16, or 948.21, F.S., or mental health courts.⁴⁹ A person who eligible for participation in a problem-solving court shall have his or case transferred to a county other than that in which the charge arose if:

- Requested by the person or a court;
- The person agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the problem-solving court in the county to which transfer is desired; and
- Both representatives agree to the transfer.⁵⁰

The jurisdiction to which the case has been transferred is required to dispose of the case.⁵¹

Involuntary Outpatient Placement

Involuntary outpatient placement, also known as assisted outpatient treatment, is a court ordered community-based treatment program for individuals with severe mental illness. These programs are designed to assist individuals with severe mental illness who have a history of treatment and medication noncompliance but do not require hospitalization. Involuntary outpatient treatment has shown to be effective in reducing the incidence and duration of hospitalization, homelessness, arrests and incarcerations, victimization, and violent episodes.⁵² It has also been shown to increase treatment compliance and promotes long-term voluntary compliance, while reducing caregiver stress.⁵³

There are strict legal requirements for individuals to be ordered into involuntary outpatient placement. The individual must be an adult with mental illness for whom all available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable and who:⁵⁴

- Is unlikely to survive safely in the community without supervision;
- Has a history of lack of compliance with treatment for mental illness;
- Has within the preceding 36 months-
 - Been involuntarily committed to a treatment or receiving facility,
 - Received mental health treatment in a forensic or correctional facility, or
 - Engaged in acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others;
- Is unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary placement for treatment or is unable to determine for himself or herself whether placement is necessary;

⁴⁷ *Id.* at 5.

⁴⁸ Office of Program Policy Analysis & Government Accountability, *supra* note 34.

⁴⁹ s. 910.035(5)(a), F.S.

⁵⁰ s. 910.035(5)(b), F.S.

⁵¹ s. 910.035(5)(f), F.S.

⁵² Assisted Outpatient Treatment Laws, Treatment Advocacy Center. <http://www.treatmentadvocacycenter.org/solution/assisted-outpatient-treatment-laws> (last visited on December 9, 2015).

⁵³ *Id.*

⁵⁴ s. 394.4655(1), F.S.

- Is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being; and
- Is likely to benefit from involuntary outpatient placement.

Only circuit judges have the authority to order an individual into involuntary outpatient placement.⁵⁵ However, the court may not order DCF or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service.⁵⁶

Child Welfare

DCF is responsible for the administration of Florida's child welfare program. The goals of the child welfare program are:⁵⁷

- The prevention of separation of children from their families;
- The protection of children alleged to be dependent or dependent children including provision of emergency and long-term alternate living arrangements;
- The reunification of families who have had children placed in foster homes or institutions;
- The permanent placement of children who cannot be reunited with their families or when reunification would not be in the best interest of the child;
- The transition to self-sufficiency for older children who continue to be in foster care as adolescents;
- The preparation of young adults that exit foster care at age 18 to make the transition to self-sufficiency as adults; and
- The prevention and remediation of the consequences of substance abuse on families.⁵⁸

To advance the goal of combating substance abuse in families, ss. 39.507, F.S., and 39.512, F.S., authorize dependency courts to order an individual undergo a substance abuse disorder assessment. The statutes additionally authorize a dependency court to order an individual to participate in and comply with a treatment-based drug court program.⁵⁹ Treatment-based drug court is an alternative to incarceration for defendants who enter the judicial system because of addiction and consists of an intensive, judicially monitored treatment program.⁶⁰

Effect of Bill

Forensic Hospital Diversion Pilot Program

This bill creates s. 916.185, F.S., to establish the Forensic Hospital Diversion Pilot Program, which is to be modeled after the Miami-Dade Forensic Alternative Center. The intent of the pilot program is to serve offenders who have 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.

Under the bill, DCF may implement the pilot program in Duval, Broward, and Miami-Dade counties. If DCF chooses to implement the pilot program, it must include a comprehensive continuum of care and

⁵⁵ s. 394.455 (7), F.S.

⁵⁶ s. 394.4655(6)(b)2, F.S.

⁵⁷ *Child Welfare*, Department of Children and Families. <http://www.myflfamilies.com/service-programs/child-welfare> (last visited on December 9, 2015).

⁵⁸ s. 39.001(6), F.S.

⁵⁹ ss. 39.507 and 39.512, F.S.

⁶⁰ *Drug Court*, First Judicial Circuit Court of Florida. <http://www.firstjudicialcircuit.org/programs-and-services/drug-court> (last visited on December 9, 2015).

services that use evidence-based practices and best practices.⁶¹ The DCF and corresponding judicial circuits may implement the pilot program if there are existing resources available on a recurring basis. The DCF may also request budget amendments to realign funds between mental health services and community substance abuse, and mental health services.

Participation in the program is limited to persons who:

- Are 18 years of age and older;
- Are 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 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 Task Force on Substance Abuse and Mental Health in the Courts, to develop educational training for judges in the pilot program counties on the community forensic system.

The DCF is authorized to adopt rules to administer the section.

Mental Health Court Programs

The bill creates s. 394.47892, F.S., to authorize each county to fund a mental health court program (MHCP) under which defendants in the justice system who are assessed with a mental illness will be processed in a manner that appropriately addresses the severity of the mental illness through treatment services tailored to the participant. If a county chooses to fund a MHCP, it must secure funding from sources other than the state for costs not otherwise assumed by the state; however, counties may use funds for treatment and other services provided through state executive branch agencies and may provide, by interlocal agreement, for the collective funding of the programs.

The bill specifies that a MHCP may include:

- Pretrial intervention programs under ss. 948.08, 948.16, and 985.345, F.S.
- Post-adjudicatory mental health court programs under ss. 948.01 and 948.06, F.S.
- Review of the status of compliance or noncompliance of sentenced defendants in the program.

Under the bill, entry into a:

- Pretrial MHCP must be voluntary.
- Post-adjudicatory MHCP must be based on the sentencing court's assessment of:
 - The defendant's criminal history, mental health screening outcome, amenability to the services of the program, total sentence points, and agreement to enter the program.
 - The recommendation of the state attorney and the victim, if any.

If a defendant, while participating in a post-adjudicatory MHCP, is subject to a violation of probation or community control under s. 948.06, such violation must be heard by the judge presiding over the MHCP. The judge is authorized to dispose of the violation as he or she deems appropriate if the resulting sentence or conditions are lawful.

Contingent on annual appropriation, the bill requires each judicial circuit to establish at least one coordinator position for the MHCP and establishes the coordinator's duties and responsibilities.

⁶¹ The bill defines the terms "best practices," "community forensic system," and "evidence-based practices" for purposes of the section in s. 916.185(2)(a)-(c), F.S., respectively.

Further, each circuit is required to annually report sufficient client-level and programmatic data to the Office of State Courts Administrator annually for the purposes of program evaluation. Client-level data include:

- 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.

Programmatic data include referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

The bill also authorizes the chief judge of each judicial circuit to appoint an advisory committee for the MHCP and specifies who may serve on such committee.

Finally, the bill amends various sections of law, as described below, to authorize courts to order defendants into pretrial and post-adjudicatory MHCPs.

- Pretrial MHCPs
 - Section 948.08(8), F.S., is amended to authorize a defendant to be voluntarily admitted into a *felony pretrial MHCP*, upon motion of either party or the court, if the defendant has a mental illness, has not been convicted of a felony, and is charged with:
 - A nonviolent felony that includes a third degree felony violation of chapter 810⁶² or any other felony offense that is not a forcible felony as defined in s. 776.08;
 - Resisting an officer with violence under s. 843.01, or 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 if the victim and state attorney consent to the defendant's participation.⁶³
 - Section 948.16(3), is amended to authorize a defendant to be voluntarily admitted into a *misdemeanor pretrial MHCP*, upon motion of either party or the court, if the defendant has a mental illness.
 - Section 985.345(4), F.S., is amended to authorize a child to be voluntarily admitted to a *delinquency pretrial MHCP*, upon motion of either party or the court, if the child has a mental illness, has not been previously adjudicated for a felony, and is charged with:
 - A misdemeanor;
 - A nonviolent felony meaning 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;
 - Resisting an officer with violence under s. 843.01, F.S., or battery on a law enforcement officer under s. 784.07, F.S., 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.⁶⁴
- Post-adjudicatory treatment based MHCPs
 - Section 948.01(8), F.S., is amended to authorize a court to place a defendant into a post-adjudicatory MHCP, as a condition of the defendant's probation or community

⁶² ch. 810, F.S., addresses burglary and trespass.

⁶³ The bill specifies that at the end of the pretrial intervention period, the court must consider the recommendations of the treatment provider and state attorney as to disposition of the pending charges. The court shall determine, by written finding, if the defendant has successfully completed program. If unsuccessful, the court may order the person to continue in education and treatment or order that the charges revert to normal channels for prosecution. If successful, the court shall dismiss the charges. s. 948.08(8)(b), F.S.

⁶⁴ The bill specifies that at the end of the delinquency pretrial intervention period, the court must consider the recommendations of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, if the child has successfully completed the program. If unsuccessful, the court may order the child to continue in an education, treatment, or monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution. If successful, the court may dismiss the charges. If charges are dismissed, the child may, if otherwise eligible, have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S. See, s. 985.345(5) and (6), F.S.

control, and s. 948.06(2)(j), F.S., is amended to authorize a court to order the successful completion of post-adjudicatory MHCP when an offender admits that he or she has violated his or her community control or probation, if:

- The offense is a nonviolent felony;⁶⁵
- The defendant is amenable to mental health treatment, including taking prescribed medications;
- The defendant is otherwise qualified under s. 394.47892(4), based on his or her criminal history, mental health screening outcome, amenability to the services of the program, total sentence points, and agreement to enter the program, and the recommendation of the state attorney and the victim, if any; and
- The defendant, after being fully advised of the purpose of the program, agrees to enter the program.⁶⁶

Veterans' Courts

The bill amends ss. 394.47891, 948.08(7)(a), 948.16(2), and 948.21, F.S., to expand the pool of veterans who are eligible for veterans' courts from only those who have been discharged or released under honorable conditions to also include veterans who have been discharged or released under a general discharge. With respect to post-adjudication diversion programs imposed as a condition of probation or community control, the bill specifies in s. 948.21(2), F.S., that the expanded eligibility criteria for general discharges applies to crimes committed on or after July 1, 2016.

The bill also amends s. 948.06(2)(j), F.S., to permit a court to order an offender to a veterans' court program when the offender admits that he or she has violated his or her community control or probation if:

- The offense is a nonviolent felony;
- The offender is amenable to a veterans' court program;
- The offender, after being fully advised of the purpose of the program, agrees to enter the program; and
- The offender is otherwise qualified for a veterans' court program under s. 394.47891, F.S.⁶⁷

Transfer to Participate in a Problem-Solving Court

The bill amends the definition of "problem-solving court" set forth in s. 910.035(5), F.S., to: (a) clarify that under existing law service members are included in "veterans' courts"; (b) make conforming changes for the bill's authorization of MHCPs by specifying the citations for the sections of law created or amended by the bill to reference mental health courts; and (c) add delinquency pretrial intervention court programs under s. 985.345, F.S.

Involuntary Outpatient Placement

Currently, only circuit court judges have the authority to order an individual into involuntary outpatient placement. The bill amends s. 394.4655, F.S., to authorize county court judges exercising original jurisdiction in misdemeanor cases to order individuals into involuntary outpatient treatment if specified criteria is met. The bill also makes a conforming change to s. 790.065(2)(a)4.d., F.S., by striking the

⁶⁵ The bill defines the term "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." It further specifies that, "[d]efendants charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143." ss. 948.01(8)(a) and 948.06(2)(j)1., F.S.

⁶⁶ When a post-adjudicatory treat-based MCHP is ordered, the original sentencing court must relinquish jurisdiction of the defendant's case to the MHCP until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply, or the defendant's sentence is completed. The Department of Corrections is authorized by the bill to establish designated mental health probation officers to support individuals under supervision of the MHCP. See, ss. 948.01(8)(b) and (c) and 948.06(2)(j)2., F.S.

⁶⁷ The provisions discussed in Footnotes 65 and 66 also apply when a court orders an offender to a veterans' court program for a violation of the offender's community control or probation. See, s. 948.06(2)(j), F.S.

term “circuit” to recognize that either a circuit or county court may order involuntary outpatient treatment under the bill.

Child Welfare

The bill makes conforming changes to child welfare statutes to incorporate references to mental health treatment and mental health courts.

B. SECTION DIRECTORY:

Section 1. Amending s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 2. Amending s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 3. Amending s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 4. Amending s. 394.4655, F.S., relating to involuntary outpatient placement.

Section 5. Amending s. 394.4599, F.S., relating to notice.

Section 6. Amending s. 394.463, F.S., relating to involuntary examination.

Section 7. Amending s. 394.455, F.S., relating to definitions.

Section 8. Amending s. 394.4615, F.S., relating to clinical records and confidentiality.

Section 9. Amending s. 394.47891, F.S., relating to military veterans and servicemembers court programs.

Section 10. Creating s. 394.47892, F.S., relating to mental health court programs.

Section 11. Amending s. 790.065, F.S., relating to the sale and delivery of firearms.

Section 12. Amending s. 910.035(5), F.S., relating to transfer for participation in a problem-solving court.

Section 13. Creating s. 916.185, F.S., relating to the Forensic Hospital Diversion Pilot Program.

Section 14. Amending s. 948.001, F.S., relating to definitions.

Section 15. Amending s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 16. Amending s. 948.06, F.S., relating to violations of probation or community control.

Section 17. Amending s. 948.08, F.S., relating to felony pretrial intervention programs.

Section 18. Amending s. 948.16, F.S., relating to misdemeanor pretrial intervention programs.

Section 19. Amending s. 948.21, F.S., relating to conditions of community control or probation for military servicemembers and veterans.

Section 20. Amending s. 985.345, F.S., relating to delinquency pretrial intervention programs.

Section 21. Reenacting s. 397.334, F.S., for the purpose of incorporating the amendments made by this act to ss. 948.01 and 948.06, F.S.

Section 22. Reenacting s. 948.12, F.S., for the purpose of incorporating the amendments made by this act to s. 948.06, F.S.

Section 23. Providing an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

This bill has an indeterminate fiscal impact to state expenditures.

Veterans' Courts

This bill expands the definition of the term "veteran" for purposes of veterans' courts to include veterans who were discharged or released under a general discharge. This may increase the number of veterans eligible to participate in veterans' court programs, which could increase the costs associated with these programs; however, such costs will be limited by the amount of state funds appropriated to such programs. Additionally, such costs may be offset to the extent that the need for prison beds is reduced by placement in veterans' court programs.

Forensic Hospital Diversion Pilot Program

The proposed legislation gives DCF the discretion to implement three pilot programs in Duval, Broward and Miami-Dade Counties, if existing recurring resources are available. If DCF chooses to implement the pilot program, the estimated annual cost of the three additional pilot programs is \$4,788,000 to fund all three pilot programs.

Mental Health Court Programs

An increased number of MHCPs will increase judicial and court workload on the front end because such programs require more hearings and monitoring; however, such increase may be mitigated by a decrease in recidivism which may be generated by additional MHCPs.⁶⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has an indeterminate fiscal impact to local government revenues.

The bill encourages counties to establish mental health court programs, and establishes guidelines for those programs. The counties which choose to establish the programs will be required to fund it with alternate sources of funding from other than the State, unless expenses are pursuant to F.S. 29.004. Since it is the option of each county court to establish such a program, the impact on revenues, if any, cannot be determined at this time.

⁶⁸ Office of the State Courts Administrator, *HB 439 Judicial Impact Statement*, dated December 1, 2015, on file with the House Appropriations Committee.

2. Expenditures:

This bill has an indeterminate fiscal impact to local government expenditures.

This bill changes the hearing and petitioning process for continuing an involuntary outpatient treatment order. The bill requires the petition be filed or hearing be held with the court, which originally issued the order, instead of the circuit court as is currently required by s. 394.4655(7)(a)1, F.S. This may shift an indeterminate amount of workload to county criminal courts, from the circuit courts.

This bill expands the definition of the term “veteran” for purposes of veterans’ courts to include veterans who were discharged or released under a general discharge. This may increase the number of veterans eligible to participate in veterans’ court programs, which could increase the costs associated with these programs for counties that choose to fund such programs. Such costs may be offset, however, to the extent that the need for jail beds is reduced by placement in veterans’ court programs. The precise effect cannot be determined because these programs are discretionary with the courts and are limited by available resources.⁶⁹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁶⁹ Id.

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. Additionally, this bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DCF to adopt rules to administer s. 916.185, F.S., which establishes the Forensic Hospital Diversion Pilot Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Children, Families & Seniors Subcommittee adopted three amendments to HB 439. The amendments:

- Made conforming changes to child welfare statutes to incorporate references to mental health treatment and mental health courts;
- Authorized criminal county courts to order misdemeanants to involuntary outpatient placement if the misdemeanant meets the criteria for involuntary outpatient placement under s. 394.4655, F.S.;
- Removed proposed language which authorized county courts to order the conditional release of misdemeanants for the purpose of competency restoration. Per DCF's analysis, the proposed language could have created a fiscal impact of approximately \$74 million.
- Defined "mental health probation";
- Amended language to align with the language utilized in the Senate companion bill, CS/SB 604.

On January 27, 2016, the Appropriations Committee adopted one amendment to CS/HB 439. The amendment:

- Amends the language which requires implementation of the Forensic Hospital Diversion Pilot Program by the Department of Children and Families, making it optional at the discretion of the department.

On February 10, 2016, the Judiciary Committee adopted two amendments to CS/CS HB 439. The amendments made: (1) a conforming change to s. 790.065(2)(a)4.d., F.S., by striking the term "circuit" to recognize that either a circuit or county court may order involuntary outpatient treatment under the bill; and (2) made changes in s. 985.345, F.S., to better organize, and use terminology consistently within, the section and to remove an incorrect reference to a plea of nolle contendere occurring within a pretrial diversion program.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.