

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1051 Forensic Hospital Diversion Pilot Program

**SPONSOR(S):** Ponder

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Roth	Brazzell
2) Health Care Appropriations Subcommittee	13 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness, are a defendant in a criminal case, and are found incompetent to stand trial or are adjudicated not guilty by reason of insanity. Forensic services may be provided in jail, the community, a community-based residential setting, or a state treatment facility. The setting depends on the stage of the court proceeding, the nature of the individual's mental illness, and the type and degree of charge he or she faces. More serious charges, especially those involving violence, lead to service provision in more restrictive settings.

The Miami-Dade Forensic Alternative Center (MDFAC) is a community-based forensic commitment program. Section 916.185, F.S., establishes the Forensic Hospital Diversion Pilot Program (FHDPP), which is modeled after the MDFAC. DCF may implement the pilot program in Duval, Broward, and Miami-Dade counties. If the pilot program is implemented, DCF must include a comprehensive continuum of care and services that use evidence-based practices and best practices to treat offenders who have mental health and co-occurring substance abuse disorders. DCF and the judicial circuits including the county sites may implement the pilot if recurring resources are available. DCF is authorized to request budget amendments to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot.

Currently, DCF has not established any forensic alternative treatment centers modeled after the MDFAC program and has no plans to do so as it does not currently have existing resources available on a recurring basis that can be realigned without negatively impacting other services and programs.

HB 1051 amends s. 916.185, F.S., to add Okaloosa County to the list of counties where DCF may implement a Forensic Hospital Diversion Pilot Program modeled after the MDFAC. This allows but does not require DCF to create a Forensic Hospital Diversion Pilot Program in Okaloosa County.

The bill has no fiscal impact on state or local government. See Fiscal Analysis.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Mental Illness and Substance Abuse of Offenders in the Criminal Justice System

An estimated 17,000 prison inmates, 15,000 jail detainees, and 40,000 individuals under correctional supervision are experiencing serious mental illness each day in Florida.<sup>1</sup> Annually, up to 125,000 adults with a mental illness or substance use disorder requiring immediate treatment are arrested and booked into Florida jails.<sup>2</sup>

Between 2002 and 2010, the population of inmates with mental illness or substance use disorder in Florida increased from 8,000 to 17,000 inmates.<sup>3</sup> By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000.<sup>4</sup>

Most individuals with serious mental illness or substance use disorder 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.<sup>5</sup> These individuals are often poor, uninsured, and homeless.<sup>6</sup>

##### *Mental Illness and Substance Abuse*

Mental health and mental illness are not synonymous. Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.<sup>7</sup> The primary indicators used to evaluate an individual's mental health are:<sup>8</sup>

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.<sup>9</sup> Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

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<sup>1</sup> The Florida Senate, *Forensic Hospital Diversion Pilot Program, Interim Report 2011-106*, (Oct. 2010), p. 1, available at <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-106cf.pdf> (last viewed on March 24, 2017).

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

<sup>3</sup> *Supra*, note 1 at 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

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

<sup>7</sup> *Mental Health Basics*, Centers for Disease Control and Prevention. <http://www.cdc.gov/mentalhealth/basics.htm> (last viewed on March 24, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Mental illness affects millions of people in the United States each year. Only about 17% of adults in the United States are considered to be in a state of optimal mental health.<sup>10</sup> This leaves the majority of the population with less than optimal mental health:<sup>11</sup>

- One in five adults (43.8 million people) experiences mental illness in a given year;
- Approximately 6.9 percent (16 million people) had at least one major depressive episode in the past year; and
- Approximately 18.1 percent of adults live with anxiety disorders, such as obsessive-compulsive disorder (OCD), posttraumatic stress disorder (PTSD), and specific phobias.

Many people are diagnosed with more than one mental illness. For example, people who suffer from a depressive illness (major depression, bipolar disorder, or dysthymia) often have a co-occurring mental illness such as anxiety.<sup>12</sup>

Substance abuse also affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>13</sup> Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>14</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.<sup>15</sup> Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.<sup>16</sup>

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>17</sup> The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>18</sup>

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.<sup>19</sup> Drug overdose is now the leading cause of injury-related death in the United States.<sup>20</sup> In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses,<sup>21</sup> and at least one opioid caused 2,530 of those deaths.<sup>22</sup> Statewide, in 2015, heroin caused 733 deaths, fentanyl caused

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<sup>10</sup> *Id.* Mental illness can range in severity from no or mild impairment to significantly disabling impairment. Serious mental illness is a mental disorder that has resulted in a functional impairment which substantially interferes with or limits one or more major life activities. *Any Mental Illness (AMI) Among Adults*, National Institute of Mental Health, available at <http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml> (last viewed on March 24, 2017).

<sup>11</sup> *Mental Health by the Numbers*, National Alliance on Mental Illness, available at <http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers> (last viewed March 24, 2017).

<sup>12</sup> *Mental Health Disorder Statistics*, John Hopkins Medicine, available at [http://www.hopkinsmedicine.org/healthlibrary/conditions/mental\\_health\\_disorders/mental\\_health\\_disorder\\_statistics\\_85.P00753/](http://www.hopkinsmedicine.org/healthlibrary/conditions/mental_health_disorders/mental_health_disorder_statistics_85.P00753/) (last viewed on March 24, 2017).

<sup>13</sup> WORLD HEALTH ORGANIZATION. *Substance Abuse*, [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last viewed on March 23, 2017).

<sup>14</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, available at: <http://www.samhsa.gov/disorders/substance-use> (last viewed on March 23, 2017).

<sup>15</sup> NATIONAL INSTITUTE ON DRUG ABUSE, *Drugs, Brains, and Behavior: The Science of Addiction*, available at: <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last viewed on March 23, 2017).

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

<sup>17</sup> *Supra*, note 14.

<sup>18</sup> *Id.*

<sup>19</sup> WORLD HEALTH ORGANIZATION, *Information Sheet on Opioid Overdose*, November 2014. [http://www.who.int/substance\\_abuse/information-sheet/en/](http://www.who.int/substance_abuse/information-sheet/en/) (last viewed on March 23, 2107).

<sup>20</sup> TRUST FOR AMERICA'S HEALTH, *The Facts Hurt: A State-by-State Injury Prevention Policy Report 2015*, available at: <http://healthyamericans.org/reports/injuryprevention15/> (last viewed on March 23, 2017).

<sup>21</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Drug Overdose Death Data*, available at: <https://www.cdc.gov/drugoverdose/data/statedeaths.html> (last viewed on March 23, 2017).

<sup>22</sup> FLORIDA DEPARTMENT OF LAW ENFORCEMENT. *Drugs Identified in Deceased Persons by Florida Medical Examiners-2015 Annual Report*, available at: <https://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx> (last viewed on March 23, 2017).

705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75% statewide when compared with 2014.<sup>23</sup>

Drug overdose deaths doubled in Florida from 1999 to 2012.<sup>24</sup> Over the same time period, drug overdose deaths occurred at a rate of 13.2 deaths per 100,000 persons.<sup>25</sup> The crackdown on “pill mills” dispensing prescription opioid drugs, such as oxycodone and hydrocodone, reduced the rate of death attributable to prescription drugs<sup>26</sup> but may have generated a shift to heroin use, contributing to the rise in heroin addiction.<sup>27</sup>

In 2013, an estimated 21.6 million persons aged 12 or older were classified with having substance dependence or abuse issues.<sup>28</sup> Of these, 2.6 million were classified with dependence or abuse of both alcohol and illicit drugs, 4.3 million had dependence or abuse of illicit drugs but not alcohol, and 14.7 million had dependence or abuse of alcohol but not illicit drugs.<sup>29</sup>

### *Cost of Mental Illness and Substance Abuse*

Significant social and economic costs are associated with mental illness. Persons diagnosed with a serious mental illness experience significantly higher rates of unemployment compared with the general population.<sup>30</sup> This results in substantial loss of earnings each year<sup>31</sup> and can lead to homelessness. Homelessness is especially high for people with untreated serious mental illness, who comprise approximately one-third of the total homeless population.<sup>32</sup> Both adults and youth with mental illness frequently interact with the criminal justice system, which can lead to incarceration. For example, seventy percent of youth in juvenile justice systems have at least one mental health condition and at least twenty percent live with a severe mental illness.<sup>33</sup>

Substance abuse likewise has substantial economic and societal costs. As of 2015, the total estimated cost of drug abuse and addiction due to use of tobacco, alcohol, and illegal drugs in the United States was estimated at more than \$700 billion a year related to crime, lost work productivity, and health care.<sup>34</sup> This consists of \$204 billion/year related to illegal drugs, \$249 billion/year related to alcohol, and \$425 billion/year related to tobacco use.<sup>35</sup> Mental illness and substance abuse commonly co-occur. Approximately 8.9 million adults have co-occurring disorders.<sup>36</sup> In fact, more than half of all adults with

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<sup>23</sup> *Id.* at pg. 3.

<sup>24</sup> FLORIDA DEPARTMENT OF HEALTH, *Special Emphasis Report: Drug Poisoning (Overdose) Deaths, 1999-2012*, available at: <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/documents/CDC-Special-Emphasis-Drug-poisoning-overdose-1999-2012-B-Poston-FINAL.pdf> (last viewed on March 23, 2017).

<sup>25</sup> *Id.*

<sup>26</sup> *Supra*, note 22.

<sup>27</sup> *Supra*, note 13.

<sup>28</sup> Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings, United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.samhsa.gov%2Fdata%2Fsites%2Fdefault%2Ffiles%2FNSDUHresultsPDFWHTML2013%2FWeb%2FNSDUHresults2013.pdf&ei=L74IVZydKO2SsQStroDQCg&usq=AFQjCNE8sNFxhZQfOgdkJvOgZR3fP5l0Uw> (last viewed on March 24, 2017).

<sup>29</sup> *Id.*

<sup>30</sup> *Accounting for Unemployment Among People with Mental Illness*, Baron RC, Salzer MS, *Behav. Sci. Law.*, 2002;20(6):585-99. <http://www.ncbi.nlm.nih.gov/pubmed/12465129> (last viewed on March 24, 2017).

<sup>31</sup> *Supra*, note 11.

<sup>32</sup> *How Many Individuals with A Serious Mental Illness are Homeless?* Treatment Advocacy Center, available at: <http://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/2596-how-many-people-with-serious-mental-illness-are-homeless> (last viewed on March 24, 2017).

<sup>33</sup> *Supra*, note 11.

<sup>34</sup> Drug Abuse Costs The United States Economy Hundreds of Billions of Dollars in Increased Health Care Costs, Crime and Lost Productivity, National Institute on Drug Abuse, July 2008. <http://www.drugabuse.gov/publications/addiction-science-molecules-to-managed-care/introduction/drug-abuse-costs-united-states-economy-hundreds-billions-dollars-in-increased-health> (last viewed on March 24, 2017).

<sup>35</sup> *Id.*

<sup>36</sup> *About Co-Occurring*, Substance Abuse and Mental Health Services Administration. <http://media.samhsa.gov/co-occurring/default.aspx> (last viewed on March 24, 2017).

severe mental illness are further impaired by substance use disorders.<sup>37</sup> Drug abuse can cause individuals to experience one or more symptoms of another mental illness.<sup>38</sup> Additionally, individuals with mental illness may abuse drugs as a form of self-medication.<sup>39</sup> Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.<sup>40</sup>

### Florida's Substance Abuse and Mental Health Program

The Florida Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.<sup>41</sup> DCF also administers the state's forensic services, described below.

### 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 are involved with the criminal justice system. The forensic system serves defendants who are determined incompetent to proceed or not guilty by reason of insanity.

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.<sup>42</sup> The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.<sup>43</sup> Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.<sup>44</sup> A defendant is determined incompetent to proceed if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against him or her.<sup>45</sup>

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.<sup>46</sup> If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's

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<sup>37</sup> *Co-Occurring Disorders*, Psychology Today. <https://www.psychologytoday.com/conditions/co-occurring-disorders> (last viewed on March 24, 2017).

<sup>38</sup> *Comorbidity: Addiction and Other Mental Illnesses*, U.S. Department of Health and Human Services, National Institutes of Health, National Institute on Drug Abuse, NIH Publication Number 10-5771, September 2010. <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.drugabuse.gov%2Fsites%2Fdefault%2Ffiles%2Frrcomorbidity.pdf&ei=6q8NVf-iMsibNo7gg4AO&usq=AFQjCNFujSP7SHxxqB3F17961yGQNNQ56YA&bvm=bv.88528373.d.eXY> (last viewed on March 24, 2017).

<sup>39</sup> *Id.*

<sup>40</sup> *Supra*, note 36.

<sup>41</sup> These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance and children at risk for initiating drug use.

<sup>42</sup> See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

<sup>43</sup> *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

<sup>44</sup> *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

<sup>45</sup> S. 916.12(1), F.S.

<sup>46</sup> Rule 3.210, Fla.R.Crim.P.

competency is then determined by the judge in a subsequent hearing.<sup>47</sup> If the defendant is found to be competent, the criminal proceeding resumes.<sup>48</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>49</sup> Competency restoration services help defendants learn about legal process, their charges, the court dispositions they might face, and their legal rights so as to prepare them to participate meaningfully in their own defense.<sup>50</sup>

Defendants may be adjudicated not guilty by reason of insanity pursuant to s. 916.15, F.S. DCF must admit a defendant adjudicated not guilty by reason of insanity who is committed to the department<sup>51</sup> to an appropriate facility or program for treatment and must retain and treat the defendant.<sup>52</sup>

Forensic services may be provided in jail, the community, a community-based residential setting, or a state treatment facility. Section 916.105, F.S., provides Legislative intent for forensic services to individuals with mental illness to be provided in community-based settings or civil facilities whenever feasible. The setting depends on stage of the court proceeding, the nature of the defendant's mental illness, and the type and degree of charge he or she faces. More serious charges, especially those involving violence, lead to commitments in more restrictive settings.

Offenders who are charged with a felony and adjudicated incompetent to proceed and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil<sup>53</sup> and forensic<sup>54</sup> treatment facilities by the circuit court,<sup>55, 56</sup> or in lieu of such commitment, may be released on conditional release by the circuit court if the person is not serving a prison sentence.<sup>57</sup>

### *State Treatment Facilities*

State treatment facilities are the most restrictive settings for forensic services. 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.

Florida State Hospital has capacity for 959 individuals, of which 469 may receive forensic services. Up to an additional 245 individuals with forensic commitments (but do not require the security of a forensic setting) may occupy the hospital's civil beds.<sup>58</sup> The North Florida Evaluation and Treatment Center has 193 beds.<sup>59</sup> South Florida Evaluation and Treatment Center has a capacity to serve 238 individuals, and Treasure Coast Treatment Center has a contracted capacity of 208 beds.<sup>60</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> Rule 3.212, Fla.R.Crim.P.

<sup>49</sup> *Id.*

<sup>50</sup> OPPAGA, *Juvenile and Adult Incompetent to Proceed Cases and Costs*, Report. No. 13-04, Feb. 2013, p. 1.

<sup>51</sup> The court may also order outpatient treatment at any other appropriate facility or service or discharge the defendant. Rule 3.217, Fla.R.Crim.P.,

<sup>52</sup> S. 916.15(3), F.S.

<sup>53</sup> 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.

<sup>54</sup> 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.

<sup>55</sup> "Court" is defined to mean the circuit court. s. 916.106(5), F.S.

<sup>56</sup> SS. 916.13, 916.15, and 916.302, F.S.

<sup>57</sup> S. 916.17(1), F.S.

<sup>58</sup> Florida Department of Children and Families, *Forensic Facilities*, 2014, available at <http://www.myflfamilies.com/service-programs/mental-health/forensic-facilities> (last viewed March 24, 2017).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.<sup>61</sup> In addition to general psychiatric treatment approaches and environment, specialized services include:

- Psychosocial rehabilitation,
- Education,
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention,
- Sexually transmitted disease education and prevention,
- Substance abuse awareness and prevention,
- Vocational training,
- Occupational therapies, and
- Full range of medical and dental services.<sup>62</sup>

DCF must admit defendants committed to its care for forensic involuntary hospitalization within 15 days of commitment.<sup>63</sup> However, the high number of forensic commitments in FY 2014-2015 (1,573) and FY 2015-2016 (1,587) has made it challenging for DCF to admit individuals within the statutory time frame. In FY 2015-2016, it took an average of 12 days to admit forensic individuals into state mental health treatment facilities.<sup>64</sup>

### *Community-Based Services*

Before an individual is admitted into a state facility, community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities.

Community-based services may be provided to an individual on conditional release. Conditional release is release into the community accompanied by outpatient care and treatment.<sup>65</sup> The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.<sup>66</sup>

### *Jail-Based Services*

Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission.<sup>67</sup>

### Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based forensic commitment program. The program provides services under a contract with the South Florida Behavioral Health Network, which is the managing entity administering DCF-funded safety net behavioral health services in Miami-Dade County. The MDFAC is a short-term residential treatment program serving offenders who have mental illnesses or co-occurring mental illnesses and substance

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<sup>61</sup> Florida Department of Children and Families, *About Adult Forensic Mental Health (AFMH)*, 2014, available at <http://www.myflfamilies.com/service-programs/mental-health/about-adult-forensic-mental-health> (last viewed March 24, 2017).

<sup>62</sup> *Id.*

<sup>63</sup> S. 916.107(1)(a), F.S.

<sup>64</sup> DCF, *Exhibit D-3A, Expenditures by Issue and Appropriation Category, Budget Period 2017-2018*, p. 354.

<sup>65</sup> *Id.*

<sup>66</sup> S. 916.16(1), F.S.

<sup>67</sup> *Id.*

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.<sup>68</sup> 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.<sup>69</sup>

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community through a 16-bed facility.<sup>70</sup> From FY 2011-2012 through FY 2015-16, MDFAC has admitted 158 forensic individuals.<sup>71</sup>

#### *Forensic Hospital Diversion Pilot Program*

Section 916.185, F.S., establishes the Forensic Hospital Diversion Pilot Program (FHDPP), which is modeled after the MDFAC. 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.<sup>72</sup> However, s. 916.185(4)(f), F.S., allows a pilot facility to serve only individuals who would otherwise have been committed to a state mental health treatment facility.

DCF may implement the pilot program in Duval, Broward, and Miami-Dade counties.<sup>73</sup> If the pilot program is implemented, DCF must include a comprehensive continuum of care and services that use evidence-based practices and best practices to treat offenders who have mental health and co-occurring substance abuse disorders.<sup>74 75</sup> DCF and the circuits may implement the pilot if recurring resources are available. DCF is authorized to request budget amendments to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot program.<sup>76</sup>

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.<sup>77</sup>

DCF has not established any forensic alternative treatment centers modeled after the MDFAC program and currently has no plans to do so as the department lacks existing resources available on a recurring basis that can be realigned without negatively impacting other services and programs.<sup>78</sup>

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<sup>68</sup> S. 916.185(1), F.S.

<sup>69</sup> S. 916.185(4), F.S.

<sup>70</sup> Florida Department of Children and Families, *Agency Analysis of 2015 House Bill 7113*, p. 2 & 4 (Mar. 19, 2015).

<sup>71</sup> Florida Department of Children and Families, *Agency Analysis of 2017 House Bill 1051*, p. 2 (Mar. 24, 2017).

<sup>72</sup> S. 916.185(1), F.S.

<sup>73</sup> S. 916.185(3)(a), F.S.

<sup>74</sup> S. 916.185(3)(b), F.S.

<sup>75</sup> "Best practices," "community forensic system," and "evidence-based practices" are defined in s. 916.185(2)(a)-(c), F.S., respectively.

<sup>76</sup> S. 916.185(3)(c), F.S.

<sup>77</sup> S. 916.185(4)(a)-(f), F.S.

<sup>78</sup> Email from Lindsey Zander, Department of Children and Families, Legislative Specialist, RE: Forensic Alternative Treatment Centers, (March 15, 2017), on file with the Children, Families, and Seniors Subcommittee staff.



## Effect of the Proposed Changes

HB 1051 amends s. 916.185, F.S., to add Okaloosa County, in conjunction with the First Judicial Circuit Court, to the list of counties where DCF may implement a Forensic Hospital Diversion Pilot Program modeled after the MDFAC. This gives DCF the option of creating a Forensic Hospital Diversion Pilot Program in Okaloosa County but does not require DCF to do so.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 916.185, F.S., relating to forensic hospital diversion pilot program.

**Section 2:** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill authorizes one additional pilot program in Okaloosa County. However, the bill does not specify the number of individuals to be served or the number of residential beds to be maintained by the pilot program.<sup>79</sup>

South Florida Behavioral Health Network (SFBHN) currently funds the MDFAC at approximately \$1.6 million annually. The program has 16 short-term residential beds, and DCF funds purchase 14.87 beds at the rate of \$284.81 per day. Annual program costs also include approximately \$35,000 in case management services and \$15,000 in incidental funds. These services assist individuals restored to competency in integrating back to the community.<sup>80</sup>

By comparison, the average cost of serving an individual in a state mental health treatment facility is \$316 per day.<sup>81</sup> However, individuals considered for alternative placement at MDFAC have lesser

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<sup>79</sup> *Supra*, at note 71 p. 4.

<sup>80</sup> *Id.*

<sup>81</sup> *Supra*, at note 64 at 355.

felony offenses.<sup>82</sup> Therefore, the MDFAC serves a different population than do the state mental health treatment facilities.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>82</sup> *Supra*, at note 71 at 2.  
**STORAGE NAME:** h1051d.HCA  
**DATE:** 4/4/2017