

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1094

INTRODUCER: Senator Gainer

SUBJECT: Forensic Hospital Diversion Pilot Program

DATE: March 27, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1094 authorizes the Department of Children and Families to include Okaloosa County in an existing pilot program, the Forensic Hospital Diversion Pilot Program. The program is aimed at diverting mental health treatment of criminally accused or at-risk persons from state forensic treatment facilities to community-based programs. Since July 1, 2016, the Department has been authorized to implement the program in Broward, Duval, and Miami-Dade counties to restore competency to persons found incompetent to proceed to trial and to treat those at risk for returning to the criminal justice system. As provided in existing law, the program must be modeled after the Miami-Dade Alternative Treatment Center, which has been in operation since 2009.

**II. Present Situation:**

In 2016, the Legislature created the Forensic Hospital Diversion Pilot Program to serve certain offenders who have mental illnesses or co-occurring mental illnesses and substance use disorders. Particularly, the program is intended to serve those offenders who are involved in the criminal justice system or at risk of re-entering state forensic mental health treatment facilities,<sup>1</sup> prisons, jails, or state civil mental health treatment facilities.<sup>2, 3</sup>

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<sup>1</sup> “Forensic facility” means “a separate and secure facility established within the department or agency to serve 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 this chapter from nonforensic residents.” Section 916.106(10), F.S.

<sup>2</sup> Section 916.185(1), F.S.

<sup>3</sup> “Civil facility” means “[a] mental health facility established within the department or by contract with the department to serve individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility; or [a]n intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, designated by the agency to serve those defendants who do not require the security provided in a forensic facility.” Section 916.106(4), F.S.

The 2016 legislation was based on findings regarding two main categories of inmates, those who needed competency restored before standing trial and those who had been released from a forensic mental health treatment facility following treatment. Regarding the first group, the Legislature found that jail inmates who were incompetent to proceed<sup>4</sup> could be served more effectively and with less cost than in community-based alternative programs. As to the second group, the Legislature found that persons who have serious mental health illnesses could avoid returning to the criminal justice and forensic mental health systems if they received specialized treatment in the community.<sup>5</sup>

The Department of Children and Families is authorized to implement the pilot program in Duval, Broward, and Miami-Dade counties, in conjunction with each county's Judicial Circuit.<sup>6</sup>

Participation in the pilot program is limited to offenders who:

- Are 18 years of age or older;
- Are charged with a felony of the second or third degree felony;<sup>7</sup>
- Do not have a significant history of violent criminal offenses;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity;<sup>8</sup>
- Meet public safety and treatment criteria established by the department for placement in a community setting; and
- Otherwise would be admitted to a state mental health treatment facility.<sup>9</sup>

The legislation creating the pilot program directs the Department to model it after the Miami-Dade Forensic Alternative Center (MDFAC), which opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults who have lesser felony offenses and are not considered a danger to the community.<sup>10</sup> The MDFAC provides competency restoration and a continuum of care during commitment and after re-entry to the community.<sup>11</sup> The MDFAC currently operates a 16-bed facility at a daily cost of \$284.81 per bed, or approximately \$1.6 million per year.<sup>12</sup>

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<sup>4</sup> "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 him or her." Section 916.12(1), F.S.

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

<sup>6</sup> Section 916.185(3)(a), F.S.

<sup>7</sup> The intent of the program includes treating persons who have been released from a state forensic facility, in order to prevent them from becoming re-involved with the criminal justice system. However, this criterion does not seem applicable to these persons.

<sup>8</sup> See previous note.

<sup>9</sup> Section 916.185(4), F.S.

<sup>10</sup> Department of Children and Families, *2016 Agency Legislative Bill Analysis* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).

<sup>11</sup> Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-18, The Forensic Mental Health System* (September 2011).

<sup>12</sup> Department of Children and Families, *2017 Agency Legislative Bill Analysis* (Feb 28, 2017) (on file with the Senate Committee on Judiciary).

**III. Effect of Proposed Changes:**

The bill authorizes the Department of Children and Families to expand the Forensic Hospital Diversion Pilot Program to into Okaloosa County, in conjunction with the First Judicial Circuit in Okaloosa County. And if the program is implemented in Okaloosa County, it is subject to the same requirements governing the pilot program in the three counties where it is currently authorized.

The bill takes effect July 1, 2017.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact is unknown. First, the Department is not required to implement the program, and the Department has not indicated in its Legislative Bill Analysis for this bill whether it will do so. Under the 2016 statute creating the pilot program, the Department and the corresponding judicial circuits are authorized to implement the program if “existing resources are available to do so on a recurring basis. The department may request budget amendments pursuant to chapter 216 to realign funds between mental health services in order to implement [the] pilot program.”

But if the Department does implement the program in Okaloosa County, it is not clear what the fiscal impact will be. The Department’s Analysis indicates that the Miami-Dade

Forensic Alternative Center costs \$284.81 per bed, per day.<sup>13</sup> Program costs also include case management services at \$35,000 per year and incidental funds at the annual rate of \$15,000.<sup>14</sup>

The Department's analysis also indicates that if it were to redirect existing resources to the pilot program, the redirection "could impact the availability of resources to provide services in both community and forensic mental health programs."<sup>15</sup> However, the Department did not include current data on the per-day cost of treating persons who would be eligible for treatment under the pilot program at a forensic facility.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 916.185, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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

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

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