

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 721 Mental Health and Substance Abuse Services
SPONSOR(S): Health & Human Services Committee; Silvers
TIED BILLS: **IDEN./SIM. BILLS:** SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N	Langston	Brazzell
2) Health Care Appropriations Subcommittee	12 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee	19 Y, 0 N, As CS	Langston	Calamas

SUMMARY ANALYSIS

Forensic clients are individuals who have been committed to the Department of Children and Families (DCF) pursuant to ch. 916, F.S., because they have been charged with committing a felony but been adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed.

Currently, jail physicians must provide a current psychotropic medication order at the time a forensic client is transferred to the state mental health treatment facility or upon request of the admitting physician after the client is evaluated. However, there is no timeframe within which a jail physician must respond to a request by DCF for such medication information, nor is there any requirement for jail physicians to provide other medical information about individuals being transferred to DCF. Some individuals have medical needs that require immediate care or treatment upon transfer to DCF.

When forensic clients are released from state mental health treatment facilities, most are returned to the county jail of the committing jurisdiction to await resolution of their court cases. Some individuals are maintained by county jails on the same psychotropic medication regimen prescribed and administered at the state mental health treatment facility, while others individuals are not. Changing medications may result in individuals losing competency and returning to a state mental health treatment facility.

Prevention coalitions are local partnerships between multiple sectors of the community that respond to community conditions by developing and implementing comprehensive plans that lead to measurable, population-level reductions in drug use and related problems. Florida is the only state that requires prevention coalitions to be certified.

CS/HB 721 require the county jails continue to administer the psychotropic medications prescribed by DCF when a forensic client is discharged and return to the county jail, unless the jail physician documents the need to change or discontinue such medication. The jail physician has the final authority on medication decisions, but must collaborate with the DCF physician to ensure that changing medications will not adversely affect the inmate's mental health or ability to remain competent to continue with court proceedings. Additionally, the bill requires county jails to send all medical information for individuals in their custody who will be admitted to state mental health treatment facilities. DCF must request this information within two business days of receipt of a completed commitment packet. Upon receipt of such a request, the county jail must provide the requested information within three business days.

The bill also repeals the requirement for DCF to develop a certification process by rule for community substance abuse prevention coalitions.

The bill will have an indeterminate fiscal impact on state and local governments. *See Fiscal Analysis & Economic Impact Statement.*

The bill provides an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0721e.HHS

DATE: 1/19/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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.¹ This leaves the majority of the population with less than optimal mental health:²

- 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, posttraumatic stress disorder, 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.³

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.⁴ Annually, up to 125,000 adults with a mental illness or substance use disorder requiring immediate treatment are arrested and booked into Florida jails.⁵ 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.⁶ By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000.⁷

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.⁸ These individuals are often poor, uninsured, and homeless.⁹

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

¹ *Mental Health Basics*, Centers for Disease Control and Prevention. <http://www.cdc.gov/mentalhealth/basics.htm> (last visited January 12, 2018). 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 January 12, 2018).

² *Mental Health by the Numbers*, National Alliance on Mental Illness, available at <http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers> (last visited January 12, 2018).

³ *Mental Health Disorder Statistics*, John Hopkins Medicine, available at http://www.hopkinsmedicine.org/healthlibrary/conditions/mental_health_disorders/mental_health_disorder_statistics_85,P00753/ (last visited January 12, 2018).

⁴ 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 visited January 12, 2018).

⁵ *Id.*

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

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.¹⁰ 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 states from trying and convicting defendants who are incompetent to stand trial.¹¹ 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.¹² 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.¹³ 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.¹⁴

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.¹⁵ If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.¹⁶ If the defendant is found to be competent, the criminal proceeding resumes.¹⁷ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.¹⁸ 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.¹⁹

Defendants may be adjudicated not guilty by reason of insanity pursuant to s. 916.15, F.S. DCF must admit such defendants who are committed to DCF²⁰ to an appropriate facility or program for treatment and must retain and treat the defendant.²¹

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 civil²² and

¹⁰These 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.

¹¹ See *Pate v. Robinson*, 383 U.S. 375, (1966); *Bishop v. U.S.*, 350 U.S. 961, (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

¹² *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

¹³ *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

¹⁴ S. 916.12(1), F.S.

¹⁵ Rule 3.210, Fla.R.Crim.P.

¹⁶ *Id.*

¹⁷ Rule 3.212, Fla.R.Crim.P.

¹⁸ *Id.*

¹⁹ Office of Program Policy Analysis & Government Accountability, *Juvenile and Adult Incompetent to Proceed Cases and Costs*, Report. No. 13-04, Feb. 2013, p. 1.

²⁰ 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.,

²¹ S. 916.15(3), F.S.

forensic²³ treatment facilities by the circuit court,²⁴ 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.²⁵

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. DCF oversees two state-operated forensic facilities, Florida State Hospital²⁶ and North Florida Evaluation and Treatment Center,²⁷ and two privately-operated, maximum security forensic treatment facilities.²⁸ 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.²⁹ 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.³⁰

DCF must admit defendants committed to its care for forensic involuntary hospitalization within 15 days of commitment.³¹ In FY 2015-2016, it took an average of 12 days to admit forensic individuals into state mental health treatment facilities.³²

Forensic clients are individuals who have been committed to DCF, pursuant to ch. 916, F.S., because they have been charged with committing a felony but been adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed.

²² 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.

²³ 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.

²⁴ Ss. 916.13, 916.15, and 916.302, F.S. "Court" is defined to mean the circuit court. s. 916.106(5), F.S.

²⁵ S. 916.17(1), F.S.

²⁶ 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. See Department of Children and Families, *Forensic Facilities*, 2014, available at <http://www.myflfamilies.com/service-programs/mental-health/forensic-facilities> (last visited January 12, 2018).

²⁷ Id. The North Florida Evaluation and Treatment Center has 193 beds.

²⁸ Id. 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.

²⁹ 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 visited January 12, 2018).

³⁰ Id.

³¹ S. 916.107(1)(a), F.S.

³² Department of Children and Families, *Exhibit D-3A, Expenditures by Issue and Appropriation Category, Budget Period 2017-2018*, p. 354.

Medical Information Sharing Between County Jails and DCF

Forensic clients committed to DCF's state mental health treatment facilities are transferred to the facilities directly from the county jails, and some may have medical conditions that require on-going or immediate medical treatment.³³ Current law requires jail physicians to provide a current psychotropic medication³⁴ order at the time a forensic client is transferred to the state mental health treatment facility or upon request of the admitting physician after the client is evaluated.³⁵ However, there is no timeframe within which a jail physician must respond to a request by DCF for such information, nor is there any requirement for jail physicians to provide other medical information about individuals being transferred to DCF. While DCF currently requests medical information from the county jails when a commitment packet is received from the courts, there is no time requirement within which DCF must make the request. According to DCF, lack of continuity of care and lack of information on the individual's medical status can result in life-threatening situations.³⁶

Continuation of Psychotropic Medications

When forensic clients are released from state mental health treatment facilities, most are returned to the county jail of the committing jurisdiction to await resolution of their court cases. Some individuals are maintained by county jails on the same psychiatric medication regimen prescribed and administered at the state mental health treatment facility, while others individuals are not.

Continuation of a forensic client's psychotropic medication treatment upon transfer from a county jail to a state mental health treatment facility may prevent negative health outcomes, including loss of competency.³⁷ If an individual loses competency, then the jail must return him or her to a secure forensic facility, as he or she once again becomes unable to stand trial or proceed with resolution of his or her court case.³⁸

DCF defines a recidivist as an individual who is recommended as competent to the court, returned to the jail from the forensic facility, and then readmitted to the forensic facility as incompetent to proceed on the same charge for which they were originally found competent.³⁹ Over the last three years, there has been an increase from eight to 12 percent.⁴⁰ DCF does not collect information on the reason for the recidivism, so DCF cannot identify how often recidivism is caused by the jail's failure to maintain the forensic client's psychotropic medication treatment.

Certification of Community Substance Abuse Prevention Coalitions

Prevention coalitions are local partnerships between multiple sectors of the community that respond to community conditions by developing and implementing comprehensive plans that lead to measurable, population-level reductions in drug use and related problems. Generally, prevention coalitions have community wide involvement including parents, youth, teachers, police, faith-based leaders and business partners.⁴¹

³³ Department of Children and Families, Agency Bill Analysis for 2018 House Bill 0721, (Nov. 30, 2017) (On file with Children, Families, and Seniors Subcommittee Staff).

³⁴ Psychotropic medication is a broad term referring to medications that affect mental function, behavior, and experience; these medications include anxiolytic/hypnotic medications, such as benzodiazepines, antidepressant medications, such as selective serotonin reuptake inhibitors (SSRIs), and antipsychotic medications. Pamela L. Lindsey, *Psychotropic Medication Use among Older Adults: What All Nurses Need to Know*, J. GERONTOL NURS., (Sept. 200), available at, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3128509/> (last visited January 12, 2018).

³⁵ S. 916.107(3)(a)2.a., F.S.

³⁶ *Supra*, note 33.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Email from Lindsey Zander, Deputy Director of Legislative Affairs, Department of Children and Families, RE: Recidivist Data, (Dec. 17, 2017) (on file with Health and Human Services Committee staff).

⁴⁰ *Id.*

⁴¹ *Supra*, note 33.

Section 397.321, F.S., requires DCF to license and regulate all substance abuse providers in the state. It also requires DCF to develop a certification process by rule for community substance abuse prevention coalitions (prevention coalitions), and DCF is currently in the rulemaking process.⁴²

Prevention coalitions do not provide licensable substance abuse clinical treatment services, and certification is not a requirement for eligibility to receive federal or state substance abuse prevention funding. However, to receive funding from DCF, a coalition must follow a comprehensive process that includes a detailed needs assessment and plan for capacity building, development, implementation, and sustainability to ensure that data-driven, evidence-based practices are employed for addressing substance misuse for state-funded coalitions.

Some prevention coalitions choose to receive certification from nationally-recognized credentialing entities through an application process. Additionally, the Florida Certification Board, a non-profit professional credentialing entity, offers certifications for Certified Prevention Specialists and Certified Prevention Professionals, for those individuals who desire professional credentialing.

Florida is the only state that requires prevention coalitions to be certified.⁴³

Effect of Proposed Changes

Sharing Medical Information Between County Jails and DCF

HB 721 amends s. 916.13(2), F.S., and s. 916.15(3), F.S., to require county jails to send all medical information for individuals in their custody who will be admitted to state mental health treatment facilities. The bill requires DCF to request this information within two business days of receipt of a completed commitment packet which is provided by the court. Upon receipt of such a request, the bill requires the county jail to provide the requested information within three business days.

Continuation of Psychotropic Medications

The bill also amends s. 916.13(2)(b), F.S., and s. 916.15(5), F.S., to require the county jails to continue to administer the psychotropic medications prescribed by DCF at mental health treatment facilities when a forensic client is discharged and return to the county jail, unless the jail physician documents the need to change or discontinue such medication. Additionally, the jail physician must collaborate with the DCF physician to ensure that changing medications will not adversely affect the inmate's mental health or ability to remain competent to continue with court proceedings. However, the jail physician has the final authority on medication decisions.

So long as the jail physician documents any need to change or discontinue the psychotropic medication prescribed by DCF to the inmate, there is no requirement that county jails to continue to administer the psychotropic medications prescribed by DCF.

Repeal of Prevention Coalition Certification

The bill repeals the requirement that DCF develop a certification process by rule for community substance abuse prevention coalitions. As a result, prevention coalitions will no longer be required to be certified.

B. SECTION DIRECTORY:

Section 1: Amends s. 397.321, F.S., relating to duties of the department.

Section 2: Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

⁴² *Supra*, note 33.

⁴³ Only one other state, Ohio, has established a certification program for prevention coalitions, and it is voluntary.

Section 3: Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 4: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on DCF resulting from reduced expenditures for recidivists. If fewer individuals who are restored to competency are subsequently returned to state mental health facilities, DCF's overall caseload will be reduced, freeing bed space to serve new patients in state mental health treatment facilities. Additionally, if DCF has additional medical information for individuals transferred from jails to state mental health treatment facilities, it may reduce expenditures for addressing medical and mental health crises brought about from a lack of such information.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate insignificant negative fiscal impact on county jails that may be required to cover the cost of a specific psychotropic medication that they would not have previously covered, unless the jail physician documents a need to change or discontinue the specific psychotropic medication prescribed by the DCF physician, which would remove the fiscal impact.

The bill may also have an indeterminate positive fiscal impact on county jails resulting from fewer expenditures for recidivists who, as a result of being maintained on a specific psychotropic medication, remain competent upon return from a state mental health treatment facility and are able to stand trial in timely manner, and thus spend less time in jail awaiting trial.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may require county jails to spend funds to continue psychotropic medications;

however, an exemption applies because the bill amends criminal procedures and may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2018, the Health and Human Services Committee adopted an amendment that required county jails to:

- Continue to administer the psychotropic medications prescribed by DCF at mental health treatment facilities when a forensic client is discharged and return to the county jail, unless the jail physician documents the need to change or discontinue such medication.
- Collaborate with the DCF physician to ensure that changing medications will not adversely affect the inmate's mental health or ability to remain competent to continue with court proceedings, while granting the jail physician the final authority on medication decisions.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.