

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 960

INTRODUCER: Appropriations Committee; Children, Families, and Elder Affairs Committee; and Senator Baxley

SUBJECT: Mental Health and Substance Abuse

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Favorable</u>
3.	<u>Sneed</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 960 requires jails to continue to administer psychiatric medications as prescribed at state mental health treatment facilities upon a facility client's return to jail, unless the jail physician determines a change in medication will not adversely affect the defendant's mental health status or ability to continue with court proceedings.

The bill also requires the Department of Children and Families (DCF or department) to request an individual's medical information from jails when an individual is committed to a state mental health treatment facility within a certain timeframe. The bill also requires jails to respond to the request within a specific timeframe.

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

The bill also removes the requirement for DCF accreditation of substance abuse treatment programs operated by or are under contract with the Department of Corrections or county jails.

The bill is anticipated to have no fiscal impact on state government and an indeterminate fiscal impact on local government.

The bill is effective July 1, 2018.

II. Present Situation:

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

As many as 125,000 adults with a mental illness or substance use disorder requiring immediate treatment are arrested and booked into Florida jails each year.¹ 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.² By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000.³

State Forensic System -- Mental Health Treatment for Criminal Defendants

Chapter 916, F.S., governs the state forensic system, a network of state facilities and community services for persons with mental health issues involved with the criminal justice system. The forensic system serves defendants deemed incompetent to proceed or not guilty by reason of insanity. A defendant is deemed 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 lacks both a rational and factual understanding of the proceedings against him or her.⁴

If a defendant is suspected of being incompetent, the court, defense counsel, or the State may file a motion to have the defendant's cognitive state assessed.⁵ If the motion is granted, court-appointed experts will evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.⁶ If the defendant is found to be competent, the criminal proceeding resumes.⁷ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.⁸ Competency restoration services teach defendants about the legal process, their charges, potential legal outcomes they might face, and their legal rights so as to prepare them to participate meaningfully in their own defense.⁹

Defendants may be adjudicated not guilty by reason of insanity pursuant to s. 916.15, F.S. The DCF must admit a defendant adjudicated not guilty by reason of insanity who is committed to the department¹⁰ to an appropriate facility or program for treatment and must retain and treat the defendant.¹¹

¹ 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 4, 2018).

² *Id.*

³ *Id.*

⁴ Section 916.12(1), F.S.

⁵ Rule 3.210, Fla.R.Crim.P.

⁶ *Id.*

⁷ Rule 3.212, Fla.R.Crim.P.

⁸ *Id.*

⁹ OPPAGA, *Juvenile and Adult Incompetent to Proceed Cases and Costs*, Report. No. 13-04, Feb. 2013, p. 1, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1304rpt.pdf> (last visited January 4, 2018).

¹⁰ 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.

¹¹ Section 916.15(3), F.S.

Offenders who are charged with a felony and deemed incompetent to proceed and offenders adjudicated not guilty by reason of insanity may be involuntarily committed to state civil¹² and forensic¹³ treatment facilities by the circuit court,^{14, 15} 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.¹⁶

Sharing Medical Information between County Jails and the DCF

Forensic clients committed to the Department of Children and Families (DCF) state mental health treatment facilities are transferred to the facilities directly from the county jails, and often need immediate or continuous medical treatment.¹⁷ Jail physicians must provide a current psychotropic medication¹⁸ order at the time a forensic client is transferred to the state mental health treatment facility or upon request of the admitting physician following an evaluation.¹⁹ However, there is no timeframe within which a jail physician must respond to a request by the DCF for such information, nor is there any requirement for jail physicians to provide other medical information about individuals being transferred to the department. While the 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 the department must make the request.²⁰

Continuation of Psychiatric Medications

When forensic clients are released from state mental health treatment facilities, most are returned to the county jail 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 are not. One possible outcome of discontinuing the previous medication regimen is the individual again losing competency, in which case the jail

¹² A “civil facility” is a mental health facility established within the DCF or by contract with the 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.

¹³ A “forensic facility” is a separate and secure facility established within the DCF or the 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.

¹⁴ “Court” is defined to mean the circuit court. s. 916.106(5), F.S.

¹⁵ Sections 916.13, 916.15, and 916.302, F.S.

¹⁶ Section 916.17(1), F.S.

¹⁷ Department of Children and Families, Agency Bill Analysis for 2018 House Bill 0721, *available at* <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=21751&yr=2018> (last visited January 4, 2018).

¹⁸ 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. 2009), *available at*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3128509/> (last visited January 4, 2018).

¹⁹ Section 916.107(3)(a)2.a., F.S.

²⁰ *Supra*, note 17.

must return him or her to a secure forensic facility due to an inability to stand trial or proceed with resolution of his or her court case.²¹

Certification of Community Substance Abuse Prevention Coalitions

Section 397.321, F.S., requires the DCF to license and regulate all substance abuse providers in the state. It also requires the department to develop a certification process by rule for community substance abuse prevention coalitions (prevention coalitions). The department is currently promulgating the rule.²²

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.²³ They do not provide substance abuse treatment services, and certification is not a requirement for eligibility to receive federal or state substance abuse prevention funding. However, to receive funding from the 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.²⁴

Some prevention coalitions have chosen to apply for certification from nationally-recognized credentialing entities. The Florida Certification Board, a non-profit professional credentialing entity, offers certifications for Certified Prevention Specialists and Certified Prevention Professionals for individuals who want professional credentialing.²⁵ However, Florida is the only state that requires prevention coalitions to be certified. Only one other state, Ohio, has established a certification program for prevention coalitions, and it is voluntary.²⁶

Licensure and Regulation of Government-Operated Substance Abuse Programs

Pursuant to S. 397.403, F.S., service providers applying for a license under chapter 397, F.S., must apply to the department on forms provided by the department and in accordance with rules adopted by the department, and meet several criteria, including information regarding the physical location of the service provider, names of directors, officers, and shareholders if any, proof of insurance liability coverage, proof of satisfactory fire, health and safety inspections, and several other requirements. Applications for licensure renewal under this section must include proof of application for accreditation for each licensed service component providing clinical treatment by an accrediting organization that is acceptable to the department for the first renewal, and proof of accreditation for any subsequent renewals.²⁷

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Substance abuse programs operated directly or under contract by the DCF, the Department of Corrections, the Department of Juvenile Justice, any other state agency, or local correctional agency or authority, are subject to licensure and regulation in accordance with rules jointly developed by the department and the state or local agency operating the program.²⁸ The department has authority to exempt these programs from specific licensure provisions including, but not limited to, licensure fees and personnel background checks, and to enforce the regulatory requirements governing such programs.²⁹

III. Effect of Proposed Changes:

Section 1 repeals s. 397.321(16), F.S., requiring the DCF to develop by rule a certification process for community substance abuse prevention coalitions. As a result, such prevention coalitions will no longer be subject to a state certification process.

Section 2 amends s. 397.403(3), F.S., relating to substance abuse treatment providers, removing the accreditation requirements for inmate substance abuse programs run by or under contract with county jails or the Department of Corrections.

Section 3 amends s. 916.13, F.S., relating to involuntary commitment of defendants adjudicated incompetent to proceed, to require jails to administer the same psychiatric medications as prescribed by the treating physician upon discharge by the mental health treatment facility, unless the jail physician documents the need to change or discontinue such medications. The section requires the jail physician to collaborate with the DCF treating physician to ensure any changes to the medication regimen do not adversely impact the ability of the defendant to proceed with court proceedings. Final authority for determining which medication to administer is granted to the jail physician, and the jail physician must document any modifications made to psychiatric medications at the jail.

The section also requires a jail to send medical information for individuals in its custody that will be admitted to state mental health treatment facilities. The DCF will be required to notify the jail within two days of receipt of a commitment order and other required documents, and the jail will be required to send the medical information within three working days of the DCF notification.

Section 4 amends s. 916.15, F.S., to apply the new requirements of the bill, regarding sharing of information between jails and the DCF and continuation of psychiatric medications upon return to the jail, to instances involving involuntary commitment of defendants adjudicated not guilty by reason of insanity.

Section 5 provides the bill takes effect July 1, 2018.

²⁸ S. 397.4014, F.S.

²⁹ *Id.*

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

Article VII, s. 18(a) of the State Constitution may apply because this bill will require county jails to spend funds to continue psychiatric medications for certain inmates housed in county jails.

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature....”

However, Art. VII, s. 18(d) of the State Constitution exempts laws having an insignificant³⁰ fiscal impact from the mandates requirements. For Fiscal Year 2017-2018, the threshold for “insignificant fiscal impact” is \$2.1 million or less.³¹ No estimate has been developed at this time to suggest the magnitude of the costs to the county jails.

If the fiscal impact on counties does not exceed \$2.1 million, the bill appears to be exempt from the mandates requirements. If the fiscal impact exceeds \$2.1 million, the legislature may consider including a specific finding that the bill fulfills an important state interest and approve the bill by a two-thirds vote of the membership of each house.

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:

The accreditation requirements that were added in law in 2017 would add unnecessary administrative costs for substance abuse treatment provider organizations. The

³⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 20, 2018).

³¹ Based on the Demographic Estimating Conference’s population adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 20, 2018).

Department of Corrections and county sheriff's offices that oversee the provider contracts make the need for outside accreditation unnecessary.

C. **Government Sector Impact:**

County jails may incur an indeterminate increase in costs associated with the requirement to provide specific psychotropic medications to certain inmates that the jails have not previously provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 916.13 and 916.15.

This bill repeals section 397.321(16) of the Florida Statutes.

IX. Additional Information:

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

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

CS/CS by Appropriations on February 15, 2018:

- Removes the requirement for DCF accreditation of substance abuse treatment programs operated by or are under contract with the Department of Corrections or county jails.

CS by Children, Families, and Elder Affairs on January 9, 2018:

- Replaces the requirement that the DCF notify a jail within two days of receiving a completed commitment packet for a defendant with a requirement that the DCF instead notify the jail within two days of receiving a commitment order and other required documents for a defendant.
- Requires a DCF facility physician and a jail physician to collaborate in deciding whether to change or stop any psychiatric medications prescribed to a defendant who has regained his or her competency and is being sent back to a jail.
- Requires this collaboration in order to ensure that changing any of the defendant's current medications will not adversely impact his or her mental status or ability to continue with court proceedings.
- Requires the jail physician in such cases to document the need to change or discontinue any psychiatric medication provided at the forensic facility.
- Requires that final authority for any change in psychiatric medication in such cases be given to the jail physician.

- Imposes all of these same requirements in cases involving defendants adjudicated not guilty by reason of insanity who are sent back to a jail.

B. Amendments:

None.

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