

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1249 Treatment of Defendants Adjudicated Incompetent to Stand Trial

SPONSOR(S): Children, Families & Seniors Subcommittee, Persons-Mulicka

TIED BILLS: **IDEN./SIM. BILLS:** SB 1600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N, As CS	Morris	Brazzell
2) Health Care Appropriations Subcommittee	13 Y, 0 N	Fontaine	Clark
3) Health & Human Services Committee			

SUMMARY ANALYSIS

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 contribute to his or her community. The Department of Children and Families (DCF) is the single state authority for mental health treatment services in the state of Florida.

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, an intellectual disability, or autism and who are involved with the criminal justice system. 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 and forensic treatment facilities by the circuit court, 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.

State treatment facilities are the most restrictive settings for forensic services. A forensic facility is a secure facility established by DCF to service forensic clients. DCF oversees two state-operated forensic facilities and two privately-operated, maximum security forensic treatment facilities. 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. Current law authorizes DCF to enter into contracts to carry out the requirements for forensic services under ch. 916, F.S.

CS/HB 1249 establishes a forensic facility as a secure facility established by DCF or contracted using DCF funding which serves DCF forensic clients. Such facility may also be collocated within a county jail and operated by a community mental health provider.

The bill has no fiscal impact on DCF and local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

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 contribute to his or her community.¹ The primary indicators used to evaluate an individual's mental health are:²

- **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.³ Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.⁴

Involuntary Examinations

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.⁵ The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.⁶

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.⁷ An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.⁸

¹ World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited Jan. 9, 2022).

² Centers for Disease Control and Prevention, *Mental Health Basics*, <http://medbox.iab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm> (last visited Feb. 1, 2022).

³ *Id.*

⁴ National Institute of Mental Health (NIH), *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited Feb. 1, 2022).

⁵ The Baker Act is contained in Part I of ch. 394, F.S.

⁶ Section 394.459, F.S.

⁷ Ss. 394.4625 and 394.463, F.S.

⁸ Section 394.463(1), F.S.

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;⁹ or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.¹⁰

State Forensic System – Mental Health Treatment for Criminal Defendants

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.¹¹ 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.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

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.¹⁴ 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.¹⁵ If the defendant is found to be competent, the criminal proceeding resumes.¹⁶ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.¹⁷

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, an intellectual disability, or autism and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed¹⁸ and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil¹⁹ and forensic²⁰ treatment facilities by the circuit court,²¹ or in lieu of such commitment, may be released on conditional release²² by the circuit court if the person is not serving a prison sentence.²³ Conditional release is release into the community

⁹ Section 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.

¹⁰ Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.

¹¹ *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).

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 Rule 3.210, Fla.R.Crim.P.

¹⁵ Id.

¹⁶ Rule 3.212, Fla.R.Crim.P.

¹⁷ Id.

¹⁸ "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.

¹⁹ 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. Section 916.106(4), F.S. 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.

²⁰ 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. Section 916.106(10), F.S.

²¹ Sections 916.13, 916.15, and 916.302, F.S.

²² Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

²³ Section 916.17(1), F.S.

accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.²⁴

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.²⁵

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The Department of Children and Families (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:³⁰

- 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.

In Fiscal Year 2020-2021, there were 3,311 forensic commitments.³¹

Current law authorizes DCF to enter into contracts to carry out the requirements for forensic services under ch. 916, F.S., which includes subcontracting with mental health service providers.³²

²⁴ Section 916.16(1), F.S.

²⁵ Section 916.13(2), F.S.; section 916.15(3), 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*, <https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml> (last visited Feb. 1, 2022).

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)*, <https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml> (last visited Feb. 1, 2022).

³⁰ Id.

³¹ Department of Children and Families Long-Range Program Plan, p. 49, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23175&DocType=PDF> (last visited Feb. 2, 2022).

³² Section 916.1093, F.S. and Email from John Paul Fiore, Legislative Affairs Director, Department of Children and Families, Jail Based Restoration (Feb. 1, 2022) (on file with Children, Families, and Seniors Subcommittee staff).

Effect of the Bill

CS/HB 1249 establishes a forensic facility as a secure facility established by DCF or contracted using DCF funding which serves DCF forensic clients. Such facility may also be collocated within a county jail and operated by a community mental health provider.

B. SECTION DIRECTORY:

Section 1: Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment establishes a forensic facility as a secure facility established by DCF or contracted using DCF funding which serves DCF forensic clients and may be collocated within a county jail, and operated by a community mental health provider.

This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.