

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/SB 1600

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bradley

SUBJECT: Treatment of Defendants Adjudicated Incompetent to Stand Trial

DATE: February 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Gerbrandt</u>	<u>Money</u>	<u>AHS</u>	Recommend: Fav/CS
3.	<u>Gerbrandt</u>	<u>Sadberry</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1600 provides the Secretary of the Department of Children and Families (the DCF) with the ability to designate facilities where the DCF may provide competency restoration treatment to criminal defendants who:

- Have been charged with a felony;
- Have been deemed incompetent to stand trial due to a mental illness;
- Are being held in a jail awaiting admission to a DCF-run facility; and
- Are likely to regain competence to proceed in the foreseeable future.

The bill revises the definition of “forensic facility” in statute to include “a mental health facility operated by a community mental health provider which may be co-located in a county jail and which is deemed appropriate by the [DCF].”

The bill is likely to have a negative yet indeterminate fiscal impact on the DCF and may have a positive fiscal impact on private sector entities. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

Competency Restoration Treatment and Forensic Facilities

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 proceed¹ 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,² or in lieu of such commitment, may be released on conditional release³ by the circuit court if the person is not serving a prison sentence.⁴ Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.⁵

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.⁶

A forensic facility is a separate and secure facility established within the DCF or the APD to service forensic clients committed pursuant to ch. 916, F.S.⁷ A separate and secure facility means a security-grade building for the purposes of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.⁸

State Forensic System – Mental Health Treatment for Criminal Defendants

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.⁹ 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.¹⁰ If the defendant is found to be competent, the criminal proceeding resumes.¹¹ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.¹²

¹ "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." Section 916.12(1), F.S.

² Sections 916.13, 916.15, and 916.302, F.S.

³ Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

⁴ Section 916.17(1), F.S.

⁵ Section 916.16(1), F.S.

⁶ Section 916.106(4), F.S.

⁷ Section 916.106(10), F.S. 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.

⁸ *Id.*

⁹ Rule 3.210, Fla.R.Crim.P.

¹⁰ *Id.*

¹¹ Rule 3.212, Fla.R.Crim.P.

¹² *Id.*

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 due to a mental illness, 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.¹³

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. 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.¹⁴ 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.¹⁵

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).¹⁶ The DCF also contracts with a private provider, Wellpath Recovery Solutions (Wellpath), to operate three additional facilities that provide competency restoration training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility.¹⁷

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.¹⁸ The hospital's civil services are comprised of the following three units with a total of 490 beds:

¹³ Section 916.13(2)-(3), F.S.

¹⁴ The DCF, *About Adult Forensic Mental Health (AFMH)*, available at <https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml> (last visited January 28, 2022).

¹⁵ *Id.*

¹⁶ The DCF, *State Mental Health Treatment Facilities*, available at <https://www.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml> (last visited January 28, 2022).

¹⁷ *Id.*

¹⁸ The DCF, *Florida State Hospital Services and Programs*, available at <https://www.myflfamilies.com/service-programs/mental-health/fsh/services-programs.shtml> (last visited January 28, 2022).

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.¹⁹

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.²⁰

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.²¹ The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.²²

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.²³ The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.²⁴

As of January 13, 2022, there are a total of 548 individuals on the waitlist for forensic beds at the state's mental health facilities.²⁵ Of these, 492 individuals have been on the waitlist for more than 15 days.²⁶ Individuals spend 59 days on the waitlist on average.²⁷

Jail-Based Forensic Diversion

In addition to state-run forensic facilities, some other states currently operate jail-based treatment programs for individuals deemed incompetent to proceed.

¹⁹ *Id.*

²⁰ *Id.*

²¹ The DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center, About the Center*, available at <http://www.myflfamilies.com/service-programs/mental-health/nefsh/about.shtml> (last visited January 28, 2022).

²² *Id.*

²³ See the DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center (NFETC)*, available at <https://www.myflfamilies.com/service-programs/mental-health/nfetc/about.shtml> (last visited January 28, 2022).

²⁴ *Id.*

²⁵ E-mail from John Paul Fiore, Legislative Affairs Director, the DCF (January 29, 2022) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁶ *Id.*

²⁷ *Id.*

In 2011, the state of Georgia contracted with a university forensic program to develop a 16-bed, jail-based diversion pilot program.²⁸ The program was developed as a means of addressing a waitlist for admission to a state hospital forensic unit which had grown to more than 60 days.²⁹ The program opened in October 2011, and 16 defendants were admitted to the unit, immediately shortening the wait time for inpatient hospitalization to less than 20 days.³⁰ Because almost all competency evaluations were performed by the university forensic service, once an evaluator deemed a defendant incompetent to proceed, that defendant could be transferred to the unit and restoration services initiated before the court made a formal finding of incompetence.³¹ As a result, restoration could often be accomplished without the court ever making a formal finding of incompetence.³²

Since 2013, Colorado's Office of Behavioral Health³³ has contracted with Wellpath to operate a jail-based diversion program, known as the RISE Program, in addition to mental health treatment facilities.³⁴ Wellpath was awarded the initial contract through a competitive procurement process in 2013 and subsequent contract expansions in 2015 and 2018.³⁵ The program is divided between a county detention facility and a jail and currently provides 114 total patient beds.³⁶

Wellpath also operates the Kern County Admission, Evaluation, and Stabilization Center (AES) in Bakersfield, California.³⁷ The Kern County AES is a 60-bed jail-based competency evaluation and restoration program established through a collaboration between the Kern County Sheriff's Office, California Department of State Hospitals (DSH), and Wellpath.³⁸ Wellpath was awarded the contract through a competitive procurement process in 2018.³⁹

III. Effect of Proposed Changes:

The bill amends s. 916.13, F.S., permitting a forensic client who has been deemed incompetent to proceed due to a mental illness and who is being held in a jail awaiting admission to a facility of the DCF to obtain competency restoration treatment at any facility the DCF Secretary deems appropriate. The bill limits treatment at such facilities to defendants who are likely to regain competence in the foreseeable future.

²⁸ The Journal of the American Academy of Psychiatry and the Law, *A Jail-Based Competency Restoration Unit as a Component of a Continuum of Restoration Services*, November 2019, available at <http://jaapl.org/content/early/2019/11/21/JAAPL.003893-20#sec-1> (last visited January 29, 2022).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ The Office of Behavioral Health is Colorado's state agency handling behavioral health matters.

³⁴ The Colorado Department of Human Services, *Request for Applications: Jail-Based Program for Individuals Court Ordered to Forensic Evaluation and Treatment*, p. 3-5 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter, "The Colorado RFP").

³⁵ Wellpath Recovery Solutions, *RISE Program at Arapahoe County Detention Center*, available at <https://wellpathcare.com/rise-program-at-arapahoe-county-detention-center/> (last visited January 28, 2022).

³⁶ The Colorado RFP at p. 4.

³⁷ Wellpath Recovery Solutions, *Kern County AES Center*, available at <https://wellpathcare.com/kern-county-aes-center/> (last visited January 28, 2022).

³⁸ *Id.*

³⁹ *Id.*

The bill also amends s. 916.106, F.S., revising the definition of “forensic facility” to include a mental health facility operated by a community mental health provider which may be co-located in a county jail and which is deemed appropriate by the DCF.

The bill will alleviate the waitlist for forensic treatment beds at existing DCF-run facilities by creating additional venues where individuals deemed incompetent to stand trial due to a mental illness, but who are likely to regain competence to proceed in the foreseeable future, can receive restoration treatment.

The DCF anticipates that the proposed language would also provide flexibility in identifying and securing community-based or jail-based competency restoration treatment, for individuals who can be served in a less restrictive environment.⁴⁰

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁰ The DCF, *Agency Analysis of SB 1600*, p. 2, January 8, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

B. Private Sector Impact:

CS/SB 1600 may have a positive fiscal impact on private entities with whom the DCF contracts to operate jail-based treatment programs under the bill.

C. Government Sector Impact:

The bill is likely to have significant yet indeterminate fiscal impact on the DCF. Currently, if a person is adjudicated incompetent to proceed they are provided competency training at one of DCF's forensic or civil state mental health treatment facilities. There is a waitlist to receive services at one of DCF's mental health treatment facilities, and on average an individual spends 59 days awaiting services. The bill creates additional venues where certain individuals can receive restoration treatment and therefore may alleviate the waitlist. To the extent that the DCF would need an appropriation to cover the restoration services provided at the additional venues, as opposed to diverting the current budget for restoration services to the additional venues, the bill will have a significant yet, indeterminate fiscal impact on the DCF. The fiscal impact is indeterminate because it is unclear how many individuals will receive treatment at the newly designated facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 916.106 and 916.13.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on February 1, 2022:**

The committee substitute:

- Modifies the existing definition of “forensic facility” under s. 916.106, F.S., to provide that “the term includes a mental health facility operated by a community mental health provider which may be co-located in a county jail and which is deemed appropriate by the department.”
- Requires facilities designated for jail-based diversion programs to be operated by a community mental health provider.
- Provides that such facilities may be co-located in a county 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.
