

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1349 Mental Health Treatment  
**SPONSOR(S):** Melo and other  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	16 Y, 0 N	Curry	Brazzell
2) Appropriations Committee	27 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee	19 Y, 0 N	Curry	Calamas

### SUMMARY ANALYSIS

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 due to mental illness 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. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.

The Department of Children and Families (DCF) designates and monitors mental health receiving and treatment facilities. DCF may suspend or withdraw receiving facility designations for noncompliance with agency rules. A facility may not hold or treat involuntary patients unless it is designated by the agency.

The bill authorizes DCF to issue a conditional designation, for up to 60 days, to allow the agency time to work with facilities to address inspection and minor compliance issues without DCF having to suspend or withdraw the designation. This gives facilities time to address inspection issues without having to suspend services or reapply for a designation.

The bill revises the statutory procedures for criminal defendants found incompetent to proceed, as follows:

- Requires expert evaluators and the courts to consider alternative treatment options before ordering a defendant into a treatment facility;
- Requires the administrator of the treatment facility to notify the court within 60 days, instead of 6 months, when the administrator determines that the defendant has regained competency or no longer meets the criteria for involuntary commitment;
- Reduces the maximum time defendants may wait to be transported out of a treatment facility from 30 days to 7 days, once they are competent to proceed or no longer meet the criteria for continued commitment, and requires the courts to conduct a hearing to make a determination of competency within 30 days of notification;
- Requires the sheriffs to either administer or permit DCF to administer psychotropic medication therapy to forensic clients who are held in jail awaiting admission to a state mental health treatment facility before the client is admitted into the facility;
- Requires the referring treatment facility to transfer the defendant with up to 30 days of medication and to assist in discharge planning with medical teams at the receiving jail.

This bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Baker Act**

The Baker Act was enacted in 1971 to revise the state's mental health commitment laws.<sup>1</sup> The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations and treatment. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.<sup>2</sup>

An involuntary examination is required if there is reason to believe that the person has a mental illness and has, because of his or her mental illness, refused involuntary examination, and is likely to refuse to care for him or herself or cause harm to him or herself or others in the near future.<sup>3</sup>

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.<sup>4</sup>

#### Designation of Receiving and Treatment Facilities and Receiving Systems

DCF is authorized to designate and monitor receiving facilities,<sup>5</sup> treatment facilities,<sup>6</sup> and receiving systems.<sup>7</sup> The agency is also authorized to adopt rules establishing the procedures, criteria, and standards for obtaining and maintaining status as a designated facility<sup>8</sup> and may suspend or withdraw such designation for noncompliance.<sup>9</sup> A facility may not hold or treat involuntary patients unless it is designated by the agency.

Designated receiving facilities include public or private hospitals, crisis stabilization units (CSU),<sup>10</sup> or addictions receiving facilities that provide, at a minimum, emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders, and which may have an agreement with a corresponding facility for transportation and services.<sup>11</sup>

Treatment facilities are state-owned, state-operated, or state-supported hospitals, centers, or clinics designated by DCF for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness. This includes federal and private facilities designated by the department to provide such services.<sup>12</sup>

A public facility is a facility that has contracted with DCF and receives state funds to provide mental health services to all persons, regardless of the ability to pay.<sup>13</sup> A private facility is a hospital or facility

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<sup>1</sup> Sections 394.451-394.47892, F.S.

<sup>2</sup> Section 394.459, F.S.

<sup>3</sup> S. 394.463(1), F.S.

<sup>4</sup> S. 394.455(39), F.S. This term does not include a county jail.

<sup>5</sup> S. 394.455(13), F.S.

<sup>6</sup> S. 394.455(49), F.S.

<sup>7</sup> Ss. 394.461 and 394.4573, F.S.

<sup>8</sup> S. 394.461(6), F.S.

<sup>9</sup> S. 394.461, F.S.

<sup>10</sup> A crisis stabilization unit is a program that provides an alternative to inpatient hospitalization and that provides brief, intensive services 24 hours a day, 7 days a week, for mentally ill individuals who are in an acutely disturbed state. See s. 394.67, F.S.

<sup>11</sup> S. 394.455(13), F.S.

<sup>12</sup> S. 394.455(49), F.S. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

<sup>13</sup> S. 394.455(38), F.S.

operated by a for-profit or not-for-profit corporation or association which provides mental health or substance abuse services.<sup>14</sup> Private facilities do not receive state funds. There are currently 126 public and private designated receiving facilities in Florida.<sup>15</sup>

### *Receiving Facility Application Process*

To be eligible to apply for designation as a receiving facility, the facility must be a hospital licensed under chapter 395 or a substance abuse or mental health facility licensed under chapter 394, Part IV.<sup>16</sup> All designated facilities are required to provide emergency services, consistent with their facility's licensure to persons regardless of age, unless statutory or regulatory exceptions apply for specific circumstances for designation.<sup>17</sup>

To apply for designation, each applicant must complete and submit an application and provide the required supporting documentation, which includes:<sup>18</sup>

- A copy of the facility's license issued pursuant to Chapter 394 or 395, F.S., evidencing its eligibility to apply for designation;
- A current certificate of good standing for the applicant organization issued by the Florida Secretary of State;
- Documentation of the applicant's governing authority action authorizing the application for designation;
- Description of proposed psychiatric services including any distinct programs to be provided to each of the following consumer age groups, and the projected numbers of persons to be served in each following group:
  - Minors below 10 years of age,
  - Minors between the ages of 10 to 17 years,
  - Adults,
  - Persons 60 or more years of age; and,
  - Other specific populations.
- The corresponding street address for each reception and treatment location providing services. Designation is limited to only the locations specified in the application and approved by the department;
- Documentation of community need for maintaining or expanding the present level of designated facilities' services to meet the existing need, and why the applicant is best suited to meet this need;
- Documentation of key facility protocols to assure all involved practitioners and staff are knowledgeable of, and implement, persons' legal rights, psychiatric care, records standards, complaint reporting, investigation and reviews to maintain a consistently high level of compliance with applicable Baker Act laws, ethical principles, and rights protections;
- Description of how the facility's physical structure, staffing and policies offer frequent, if not daily, opportunity for persons to have exercise, fresh air and sunshine, except as individually restricted and documented in the person's clinical record and within the physical limitations of the facility;
- Description of how the facility's discharge planning policies provide for continuity of psychotropic medication availability until post-discharge follow-up services are scheduled; and
- For general hospitals, a description of the means utilized to create or approximate a distinct psychiatric emergency reception and triage area that minimizes individuals' exposure to undue and exacerbating environmental stresses while awaiting or receiving services.

Designation as a receiving facility is valid for three years and may be renewed by submitting a renewal application along with the required documentation at least 90 days prior to the expiration of the existing designation.<sup>19</sup>

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<sup>14</sup> S. 394.455(35), F.S.

<sup>15</sup> DCF, *Agency Bill Analysis HB 1349 (2023)*, p. 2 (on file with the House Children, Families, & Seniors Subcommittee).

<sup>16</sup> Rule 65E-5.350, F.A.C.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

## *Standards for Designated Receiving Facilities*

Designated receiving facilities must comply with the following minimum standards:<sup>20</sup>

- Have policies and procedures that prescribe, monitor and enforce all applicable regulatory requirements;
- Assure that the facility's reception, screening, and inpatient services are fully operational 24-hours-per-day, 7-days-per-week;
- Have a compliance program that monitors facility and professional compliance with Chapter 394, Part I, F.S. Every such program shall specifically monitor the adequacy of and the timeframes involved in the facility procedures utilized to expedite obtaining informed consent for treatment. This program may be integrated with other activities; and
- Ensure the centralized provision and coordination of acute care services for eligible individuals with an acute mental illness, if a public receiving facility that is affiliated with a publicly funded community mental health center.

Any facility designated as a receiving facility that fails to comply with the statutory and regulatory requirements may have its designation suspended or withdrawn for noncompliance.<sup>21</sup>

Under current law, DCF is only authorized to suspend or withdraw a facility's designation for compliance violations. As a result, a facility's designation may be suspended or withdrawn while the facility works to correct inspection violations or other issues that generally are not serious threats to health and safety such as lack of and deficiencies in staff training, outdated policies and procedures, and documentation deficiencies. In circumstances where a provider is the only available public receiving facility in a county or geographic area, "suspending" or "withdrawing" the designation based on an inspection violation or a minor infraction is not a viable option because either of these actions would result in reducing access to crisis care services.

## **State Forensic System**

### Criminal Defendants and Competency to Stand Trial

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

### Involuntary Commitment of Defendant Adjudicated Incompetent

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 due to mental illness<sup>25</sup> and offenders who are adjudicated not

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<sup>20</sup> Rule 65E-5.352, F.A.C

<sup>21</sup> Id.

<sup>22</sup> *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).

<sup>23</sup> Id. See also Rule 3.210(a)(1), Fla.R.Crim.P.

<sup>24</sup> Id. See also s. 916.12, 916.3012, and 985.19, F.S.

<sup>25</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 her or him." s. 916.12(1), F.S.

guilty by reason of insanity may be involuntarily committed to state civil<sup>26</sup> and forensic<sup>27</sup> treatment facilities by the circuit court,<sup>28</sup> or in lieu of such commitment, may be released on conditional release<sup>29</sup> by the circuit court if the person is not serving a prison sentence.<sup>30</sup> The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.<sup>31</sup> In Fiscal Year (FY) 2021-2022 there were a total 3,349 adults served by DCF in forensic commitment and 1,654 in civil commitment.<sup>32</sup>

A civil facility is, in part, a mental health facility established within DCF or by contract with 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.<sup>33</sup>

A forensic facility is a separate and secure facility established within DCF or the Agency for Persons with Disabilities (APD) to service forensic clients committed pursuant to ch. 916, F.S.<sup>34</sup> A separate and secure facility means a security-grade building for the purpose 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.<sup>35</sup>

If a defendant is suspected of being mentally incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.<sup>36</sup> 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.<sup>37</sup> If the defendant is found to be mentally competent, the criminal proceeding resumes.<sup>38</sup> If the defendant is found to be mentally incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>39</sup>

### *Mental Competence Evaluation*

A defendant is considered incompetent to proceed if 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.<sup>40</sup>

Under current law, the court may appoint no more than three experts to determine the mental condition of a defendant in a criminal case, including competency to proceed, insanity, involuntary placement, and treatment.<sup>41</sup> The experts may evaluate the defendant in jail or in another appropriate local facility or in a facility of the Department of Corrections. A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action, except if one expert finds that the

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<sup>26</sup> 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.

<sup>27</sup> Section 916.106(10), F.S.

<sup>28</sup> Sections 916.13, 916.15, and 916.302, F.S.

<sup>29</sup> Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

<sup>30</sup> Section 916.17(1), F.S.

<sup>31</sup> Section 916.16(1), F.S.

<sup>32</sup> DCF, *Long Range Program Plan*, September 20, 2022, p. 57 at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24397&DocType=PDF> (last visited March 24, 2023).

<sup>33</sup> Section 916.106(4), F.S.

<sup>34</sup> 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.

<sup>35</sup> *Id.*

<sup>36</sup> Rule 3.210, Fla.R.Crim.P.

<sup>37</sup> *Id.*

<sup>38</sup> Rule 3.212, Fla.R.Crim.P.

<sup>39</sup> *Id.*

<sup>40</sup> S. 916.12(1), F.S.

<sup>41</sup> S. 916.115, F.S.

defendant is incompetent to proceed and the parties stipulate to that finding.<sup>42</sup> The court may commit the defendant or take other action without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.<sup>43</sup>

In considering the issue of competence to proceed, an examining expert must first consider and specifically include in his or her report the defendant's capacity to:<sup>44</sup>

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings at issue;
- Manifest appropriate courtroom behavior; and
- Testify relevantly.

In addition, an examining expert shall consider and include in his or her report any other factor deemed relevant by the expert.

If an expert finds that the defendant is incompetent to proceed, the expert must report on any recommended treatment for the defendant to attain competence to proceed. The statute does not specify the treatment options that should be considered. However, in considering the issues relating to treatment, the examining expert must report on the following:<sup>45</sup>

- The mental illness causing the incompetence;
- The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;
- The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and
- The likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

A defendant who, because of psychotropic medication, is able to understand the nature of proceedings and assist in the defendant's own defense shall not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental functioning is dependent upon such medication. Psychotropic medication means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.

#### *Involuntary Commitment and Treatment*

A court may only involuntarily commit a defendant adjudicated incompetent to proceed for treatment upon finding clear and convincing evidence that:<sup>46</sup>

- The defendant has a mental illness and because of the mental illness:
  - The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or

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<sup>42</sup> S. 916.12(2), F.S.

<sup>43</sup> Id.

<sup>44</sup> S. 916.12(3), F.S.

<sup>45</sup> S. 916.12(4), F.S.

<sup>46</sup> S. 916.13(1), F.S.

- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

If a person is committed pursuant to chapter 916, the administrator at the commitment facility must submit a report to the court:<sup>47</sup>

- 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.

In Florida, 66 percent of adults in forensic commitment who were found not guilty by reason of insanity, showed an improvement in functional level during FY 2021-2022. The average number of days to restore competency for adults in forensic commitment was 103 days.<sup>48</sup>

### *Transportation to Committing Jurisdiction*

Under current law, a competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment.<sup>49</sup> The defendant must be transported back to the committing jurisdiction for the hearing. However, in some instances, defendants are not transported back timely. In order for a transport to occur, the judge must sign a transport order authorizing the defendant to be picked up by jail transportation providers, usually the sheriffs or their designee, and transported back to the committing jurisdiction. While the defendant awaits transportation back to the county with jurisdiction, he or she remains at a treatment facility. If the defendant is receiving psychotropic medication at the treatment facility when discharged or transferred to the jail, the administration of the medication must continue unless a jail physician documents the need to change or discontinue use.<sup>50</sup>

Although a competency hearing is required to be held within 30 days after the court receives notification of competency, sometimes the courts do not make a determination during the initial hearing. As a result, the defendant remains in the treatment facility beyond the 30-day timeframe. In other instances, a determination of competency is not made during the statutory timeframe because the hearing is continued or not scheduled within 30-days as required under current law. As a result, some defendants who are transported back to the committing jurisdiction decompensate before a determination of competency is made.<sup>51</sup>

On average, there are between 80 and 100 competent individuals in treatment facilities awaiting transportation back to the committing jurisdiction each day.<sup>52</sup> This directly impacts the waitlist for state mental health services, increasing the list as defendants left in state facilities continue occupying beds that could be utilized for those awaiting treatment. As of March 2023, there were 319 defendants awaiting placement into a treatment facility; of those waiting, 202 have been waiting more than 15 days. For Fiscal Year (FY) 2022-2023, the average wait time to be admitted was 52 days. Twenty (20) percent of the discharged defendants recommended as competent to proceed have taken 31 days or

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<sup>47</sup> S. 916.13(2), F.S.

<sup>48</sup> Id. at note 32.

<sup>49</sup> S. 916.13(2)(c), F.S.

<sup>50</sup> Id.

<sup>51</sup> DCF, *Agency Bill Analysis HB 1349 (2023)*, p. 4 (on file with the House Children, Families, & Seniors Subcommittee).

<sup>52</sup> Id.

more to be transported with the average pickup time ranging from as low as 21 days to as high as 132 days.<sup>53</sup>

## Rights of Forensic Clients

Section 916.107, F.S., establishes the rights of clients in the state's forensic system. The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, intellectual disability, or autism and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following the date the department or agency receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure.<sup>54</sup>

For a forensic client who is held in a jail awaiting admission to a facility for DCF or APD evaluation, treatment or training may be provided in the jail by the local community mental health provider for mental health services, by the developmental disabilities program for persons with intellectual disability or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility.<sup>55</sup>

Clients also have the right to treatment. A client shall not be denied treatment or training and services shall not be delayed because the client is indigent and unable to pay. At the time of admission and at regular intervals thereafter, the client must be given a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations. Every forensic client shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments or training, as determined by the facility. Within 30 days after admission, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had the opportunity to assist in preparing.<sup>56</sup>

## Effect of Bill

### **Baker Act**

#### Receiving Facilities - Conditional Designation

The bill authorizes DCF to issue a conditional designation for up to 60 days to allow for the implementation of corrective measures. The bill expands DCF's ability to work with facilities to correct program deficiencies while they remain in business, examining and treating individuals in their care. For facilities with minor deficiencies, the amendment will allow DCF time to enforce corrective action plans without suspending or withdrawing their designation and would allow facilities time to address inspection issues without having to suspend services or reapply for a designation.

### **State Forensic System**

#### Psychotropic Medication in Jails

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<sup>53</sup> Id. According to DCF, the average pick is as low as 21 days and as high as 132 days.

<sup>54</sup> S. 916.107(1), F.S.

<sup>55</sup> Id.

<sup>56</sup> S. 916.107(2), F.S.



The bill requires the sheriffs to either administer or permit DCF to administer psychotropic medication therapy to forensic clients who are held in jail awaiting admission to a state mental health treatment facility before the client is admitted into the facility. This will help the defendant regain competency and reduce the length of time the defendant will need to receive treatment once admitted into the treatment facility.

### Mental Competence Evaluation

The bill requires the expert evaluators and the courts to consider a list of DCF-funded minimum alternative treatment options before ordering a defendant who has been found incompetent to proceed into a treatment facility. In considering issues relating to treatment, the bill requires the evaluator to report on the completion of a clinical assessment made by approved DCF trained mental health experts to ensure the safety of the patient and the community. Experts must also consider the following treatment options:

- Mental health services;
- Treatment services;
- Rehabilitative services;
- Support services; and
- Case management services as those terms are defined in s. 394.67(16), F.S., which may be provided by or within:
  - Multidisciplinary community treatment teams;
  - Community treatment teams, such as Florida Assertive Community Treatment (FACT) teams;
  - Conditional release programs;
  - Outpatient services or intensive outpatient treatment programs; and
  - Supportive employment and supportive housing opportunities.

The bill also requires the examining expert's report to the court to include a full and detailed explanation of why the alternative treatment options referenced in the evaluation are insufficient to meet the defendant's needs.

### Involuntary Commitment of Defendant Adjudicated Incompetent

Before issuing a commitment order, the bill requires the court to review the examining expert's report to ensure that alternative treatment options have been fully considered and found insufficient to meet the needs of the defendant.

The bill requires the administrator of the treatment facility to evaluate the defendant and file a report with the court within 60 days, instead of 6 months, after the 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.

### Transportation to Committing Jurisdiction

The bill reduces the maximum time defendants may wait to be transported out of a treatment facility, from 30 days to 7 days, once they are competent to proceed or no longer meet the criteria for continued commitment. The bill also requires the courts to conduct a hearing to make a determination of competency within 30 days of notification.

The bill requires the referring treatment facility to transfer the defendant with up to 30 days of medication and to assist in discharge planning with medical teams at the receiving jail.

The bill provides an effective date of July 1, 2023.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 394.461, F.S., relating to designation of receiving and treatment facilities and receiving systems.

- Section 2:** Amends s. 916.107, F.S., relating to right to individual dignity.  
**Section 3:** Amends s. 916.12, F.S., relating to mental competence to proceed.  
**Section 4:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.  
**Section 5:** Provides an effective date of July 1, 2023.

## 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:

The bill may have an indeterminate, insignificant fiscal impact on local jails and detention centers. Section 951(4)(a), F.S., establishes the Florida Model Jail Standards Working Group (FMJS), which provides standards of care to county and municipal detention facilities. The FMJS standards include guidance to ensure that each jail has the medical staff and resources for incarcerated individuals with medical or psychiatric needs. This support would include the initiation of psychiatric medication while the individual remains in custody.

Additionally, the bill amends section 916.107, F.S., to provide that sheriffs shall administer (or allow DCF to administer) psychotropic medication to forensic clients while awaiting admission to a state mental health treatment facility.

The bill is not expected to have a significant fiscal impact as local jails and detention centers are currently required to properly manage the medical needs of incarcerated individuals, which would include psychiatric care and medications.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Current law provides DCF with sufficient rulemaking authority to execute the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**