

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1412

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

SUBJECT: Mental Health

DATE: April 24, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<b>Fav/CS</b>
2.	<u>Barr</u>	<u>Money</u>	<u>AHS</u>	<b>Favorable</b>
3.	<u>Delia</u>	<u>Yeatman</u>	<u>FP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1412 authorizes the Department of Children and Families (DCF) to issue conditional designations for Baker Act receiving and treatment facilities as an alternative to the suspension or withdrawal of a standard facility designation.

The bill also modifies ch. 916, F.S., regarding competency determination, treatment options, and restoration:

- Requires local sheriffs or the DCF to administer psychotropic medications to forensic clients in jails if clinically indicated prior to their admission to forensic facilities if clinically indicated;
- Requires expert evaluators and courts to consider alternative, community-based treatment options before ordering the placement of a defendant to a forensic facility;
- Requires administrators of forensic facilities to provide notification to courts no more than 60 days, rather than six months as in current law, from the time a defendant is competent to proceed or no longer meets commitment criteria;
- Reduces the maximum amount of time patients may wait to be transported from a forensic facility to the committing jurisdiction once they are competent to proceed or no longer meet commitment criteria, from 30 days to 7 days;
- Requires competency determinations to be made at a competency hearing within 30 days of notification from forensic facilities that patients have gained competency or no longer meet commitment criteria;

- Requires forensic facilities to transfer defendants back to the committing jurisdiction with up to 30 days of medication and assist in discharge planning with medical teams at the receiving county jail; and
- Reenacts and makes conforming changes to several existing sections of statute.

The DCF anticipates the bill will have no fiscal impact on state government. *See* Section V. of this analysis.

The bill takes effect on July 1, 2023.

## II. Present Situation:

### Receiving and Treatment Facilities

The Department of Children and Families (DCF) is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designations for failure to comply with Florida law.<sup>1</sup> A receiving facility is a public or private facility that provides emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders.<sup>2</sup> A treatment facility is a state-owned, state-operated, or state-supported hospital, center, or clinic providing extended treatment and hospitalization of persons who have a mental illness.<sup>3</sup> Unless specifically designated by the DCF, facilities are not permitted to hold or treat involuntary patients experiencing a mental health or substance use disorder crisis.<sup>4</sup>

There are currently 126 public and private designated receiving facilities in Florida.<sup>5</sup>

The DCF is also statutorily authorized to adopt rules relating to a number of issues surrounding receiving and treatment facilities, including:

- Procedures and criteria for receiving and evaluating facility applications for designation, which may include onsite facility inspection and evaluation of an applicant's licensing status and performance history, as well as consideration of local service needs;
- Minimum standards that a facility must meet and maintain in order to be designated as a receiving or treatment facility and procedures for monitoring continued adherence to such standards;
- Procedures and criteria for designating receiving systems which may include consideration of the adequacy of services provided by facilities within the receiving system to meet the needs of the geographic area using available resources;
- Procedures for receiving complaints against a designated facility or designated receiving system and for initiating inspections and investigations of facilities or receiving systems alleged to have violated regulatory laws or rules; and

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<sup>1</sup> Section 394.461, F.S.

<sup>2</sup> Section 394.455(13), F.S.

<sup>3</sup> Section 394.455(49), F.S.

<sup>4</sup> Section 394.461, F.S.

<sup>5</sup> The Department of Children and Families, *SB 1412 Bill Analysis*, March 10, 2023, at p. 2. (on file with the Senate Appropriations Committee on Health and Human Services) (hereinafter cited as, "The DCF Analysis").

- Procedures and criteria for the suspension or withdrawal of designation as a receiving facility or receiving system.<sup>6</sup>

The DCF does not have a licensing mechanism to allow facilities that have outstanding inspection findings or are the subject of an investigation to temporarily operate while under a corrective action plan. Current law only provides the DCF with the authority to suspend or withdraw designations. In circumstances where a provider is the only available public receiving facility in a geographic area, suspending or withdrawing the designation would result in reducing access to crisis care services.<sup>7</sup>

### **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 are involved with the criminal justice system and who have mental health issues, an intellectual disability, or autism. Offenders who are charged with a felony and adjudicated incompetent to proceed<sup>8</sup> 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,<sup>9</sup> or in lieu of such commitment, may be released on conditional release<sup>10</sup> by the circuit court if the person is not serving a prison sentence.<sup>11</sup> The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release, and a defendant may not be released from either commitment or conditional release except by order of the committing court.<sup>12</sup>

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. Florida law provides for the ability to commit a person under either basis; however, the goals for the commitment are different for each basis of the commitment. Persons committed under s. 916.13, F.S., after an adjudication of incompetency to proceed have a primary goal of restoration of competency; whereas persons who have been found not guilty by reason of insanity who are committed have a primary goal of stabilization and post-hospital planning.

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.<sup>13</sup>

A forensic facility is a separate and secure facility established within the DCF or the Agency for Persons with Disabilities (APD) to serve forensic clients committed pursuant to ch. 916, F.S. A

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

<sup>7</sup> The DCF Analysis at p. 2.

<sup>8</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.” Section 916.12(1), F.S.

<sup>9</sup> Sections 916.13, 916.15, and 916.302, F.S.

<sup>10</sup> Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

<sup>11</sup> Section 916.17(1), F.S.

<sup>12</sup> Section 916.16(1), F.S.

<sup>13</sup> Section 916.106(4), F.S.

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.<sup>14</sup>

### **Determination of Incompetency**

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.<sup>15</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>16</sup> If the defendant is found to be competent, the criminal proceeding resumes.<sup>17</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>18</sup>

### ***Judicial Determination of Incompetency, Expert Evaluations, and Commitment***

A defendant is deemed 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 if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.<sup>19</sup> A defendant who, because of psychotropic medication,<sup>20</sup> is able to understand the nature of proceedings and assist in the defendant's own defense must not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental functioning is dependent upon such medication.<sup>21</sup>

Section 916.115, F.S., requires courts to appoint no more than three expert evaluators to determine the mental condition of a defendant in a criminal case, including competency to proceed, insanity, involuntary placement, and treatment.<sup>22</sup> Mental health experts must first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed.<sup>23</sup> 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 defendant is incompetent to proceed and the parties stipulate to that finding. 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.<sup>24</sup> Notwithstanding any stipulation by the state and the defendant, the court may

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<sup>14</sup> Section 916.106(10), F.S.

<sup>15</sup> Rule 3.210, Fla.R.Crim.P.

<sup>16</sup> *Id.*

<sup>17</sup> Rule 3.212, Fla.R.Crim.P.

<sup>18</sup> *Id.*

<sup>19</sup> Section 916.12(1), F.S.

<sup>20</sup> "Psychotropic medication" is defined to mean 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. Section 916.12(5), F.S.

<sup>21</sup> Section 916.12(5), F.S.

<sup>22</sup> Section 916.115(1), F.S.

<sup>23</sup> Section 916.12(2), F.S.

<sup>24</sup> *Id.*

require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.<sup>25</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:

- 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.<sup>26</sup>

In addition, an examining expert must consider and include in his or her report any other factor deemed relevant by the expert.<sup>27</sup>

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.<sup>28</sup> In considering the issues relating to treatment, the examining expert must specifically report on:

- 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;
- 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.<sup>29</sup>

The statute does not specify the alternative community-based treatment options that should be considered. For Fiscal Year 2022-2023, the DCF reports that it is funding 299 community-based beds for defendants with lesser felony offenses, low symptom acuity, and those who require limited resources. Of those beds, 278 are currently filled. In addition, the DCF reports that it is increasing the number of community-based diversion options to meet anticipated future demand.<sup>30</sup>

When expert evaluators determine that a person does not meet the established criteria to proceed to trial, and alternative options are not appropriate, a court may commit the defendant to a secure setting to receive intensive behavioral health services, with the goal of competency restoration.<sup>31</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Section 916.12(3), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 916.12(4), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> The DCF Analysis at p. 3

<sup>31</sup> The DCF Analysis at p. 3.

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 six 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.<sup>32</sup>

### ***Judicial Procedure for Release and Transportation Back to Committing Jurisdiction***

Current law also requires that a competency hearing must be held within 30 days after the court receives notification that a defendant is competent to proceed or no longer meets the criteria for continued commitment.<sup>33</sup> However, many defendants are not being transported back to the committing jurisdiction in a timely manner.<sup>34</sup> While patients await transportation back to the county with jurisdiction, they remain at a treatment facility.<sup>35</sup> On an average day, there are between 80 and 100 competent individuals in treatment facilities awaiting transportation back to the committing jurisdiction.<sup>36</sup> As a result, the waitlist for state mental health services is longer as defendants awaiting transportation are left in state facilities and are occupying beds that could be used by those awaiting treatment.<sup>37</sup>

While s. 916.13, F.S., requires that a competency hearing be held within 30 days of receiving a competency notification, there are instances in which courts do not make a determination of competency during an initial hearing, resulting in a defendant remaining at a treatment facility for longer than the maximum 30 days required by current law.<sup>38</sup> Additionally, in some instances individuals that are transported back to the committing jurisdiction decompensate<sup>39</sup> before a determination of competency can be made.<sup>40</sup>

If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it.<sup>41</sup> The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings;

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<sup>32</sup> Sections 916.13(2)(b) and 916.15(3)(c), F.S. For involuntary commitment of a person under s. 916.15, F.S., the additional report must be submitted prior to the end of any period of extended commitment, rather than "at the end" of the extended commitment.

<sup>33</sup> Sections 916.13(2)(c) and 916.15(5), F.S.

<sup>34</sup> The DCF Analysis at p. 4.

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

<sup>36</sup> *Id.*

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

<sup>38</sup> *Id.*

<sup>39</sup> Psychiatrists and psychologists use the term "decompensating" to describe worsening symptoms of mental illness. An "episode of decompensation" is a period of significant, often rapid, deterioration in mental health, such as a panic attack. *See Episodes of Decompensation in Mental Illness: Social Security Disability*, available at <https://www.disabilitysecrets.com/mic2.html> (last visited March 14, 2023).

<sup>40</sup> The DCF Analysis at p. 4.

<sup>41</sup> Sections 916.13(2)(c) and 916.15(5), F.S.

however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.<sup>42</sup>

## **State Forensic System – Mental Health Treatment for Criminal Defendants**

### ***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.

### ***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).<sup>43</sup> The DCF also contracts with a private provider to operate three additional facilities that provide competency restoration treatment and training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility which are operated by Wellpath Recovery Solutions (Wellpath). The six facilities have a combined total of 2,129 treatment beds.<sup>44</sup>

As of March 15, 2023, there were a total of 330 individuals on the waitlist for forensic beds at the state's mental health facilities.<sup>45</sup> Individuals spend 59 days on the waitlist on average.<sup>46</sup>

## **Rights of Forensic Clients**

Section 916.107, F.S., establishes a number of rights for clients of the state's forensic system. Clients with mental illness, intellectual disability, or autism who are charged with committing felonies must receive appropriate treatment or training.<sup>47</sup> 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 DCF or the APD receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure.<sup>48</sup>

For a forensic client who is held in a jail awaiting admission to a facility of the DCF or the APD, evaluation and 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

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<sup>42</sup> *Id.*

<sup>43</sup> The DCF, *State Mental Health Treatment Facilities*, available at <https://www2.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml> last visited March 14, 2023).

<sup>44</sup> *Id.*

<sup>45</sup> The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Forensic Bed Waitlist*, March 15, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>46</sup> The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Re: SB 1600*, January 29, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>47</sup> Section 916.107(1)(a), F.S.

<sup>48</sup> *Id.*

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>49</sup>

Clients also have a right to treatment, including the right to be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.<sup>50</sup> Not more than 30 days after admission, each client shall also have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.<sup>51</sup>

### III. Effect of Proposed Changes:

#### Conditional Designations

**Section 1** amends s. 394.461, F.S., authorizing the Department of Children and Families (DCF) to issue conditional designations for up to 60 days in lieu of the suspension or withdrawal of a receiving or treatment facility's designation while under a corrective action plan. This will allow the DCF to work with a facility to correct program deficiencies while the facility continues the examination and treatment of individuals in their care.

#### Administration of Psychotropic Medications – Rights of Forensic Clients

**Section 2** amends s. 916.107, F.S., requiring sheriffs to either administer, or permit the DCF to administer, clinically indicated psychotropic medication to forensic clients held in a jail awaiting admission to a state mental health treatment facility. This will help stabilize defendants and create a smoother transition into the competency restoration process once a defendant is committed to a forensic facility.

#### Process for Incompetency Determinations, Alternative Treatment Options, and Modified Timelines

**Section 3** amends s. 916.12, F.S., requiring examining experts and courts to consider a list of minimum alternative treatment options before ordering a defendant to be placed in a treatment facility. Specifically, the bill requires examining experts to report on the completion of a clinical assessment made by mental health experts appointed to ensure the safety of the patient and the community. Experts must also report on the appropriateness of the following community-based options for treating and supporting the recovery of a patient:

- 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;

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<sup>49</sup> *Id.*

<sup>50</sup> Section 916.107(2)(b), F.S.

<sup>51</sup> Section 916.107(2)(d), F.S.



- 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 needs of the defendant.

**Section 4** amends s. 916.13, F.S., requiring courts to review the examining expert's report to ensure that each of the above-mentioned alternative treatment options are insufficient to meet the defendant's clinical needs when determining if there is clear and convincing evidence that requires the issuance of a commitment order.

The bill requires treatment facilities to send defendant competency evaluation reports to the court within 60 days, instead of six months, after a defendant's admission to the treatment facility.

The bill reduces the maximum amount of time defendants may wait to be transported out of a treatment facility to the committing court's jurisdiction, from 30 days to 7 days, once they have been evaluated competent to proceed or no longer meet commitment criteria. This will require the sheriff or the entity transporting the defendant to the committing jurisdiction to take custody of the defendant within a significantly shorter timeframe. This provision will reduce the likelihood that the defendant will decompensate and will reduce the waitlist for other defendants who are in need of treatment.

The bill requires courts to make a competency determination at a hearing within 30 days of notification from a treatment facility that the defendant is competent to proceed or no longer meets commitment criteria.

Additionally, treatment facilities must discharge the defendant with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. This will ensure the defendant is provided continuity of care when returning back to the committing jurisdiction.

### **Conforming Changes**

**Section 5** reenacts s. 394.658(1)(a), F.S., outlining application criteria for one-year planning grants under the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program, for the purposes of incorporating changes made under the act.

**Section 6** reenacts s. 916.106(9), F.S., defining "forensic client" and "client" as a defendant who has been committed to the Department of Children and Families or the Agency for Persons with Disabilities, for the purposes of incorporating changes made under the act.

**Section 7** reenacts s. 916.17(1) and (2), F.S., relating to conditional release of a defendant in lieu of involuntary commitment, for the purposes of incorporating changes made under the act.

**Section 8** provides an effective date of July 1, 2023.

**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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families (DCF) states the bill will have no impact on state revenue or expenditures.<sup>52</sup> The DCF also states that the bill will not have a fiscal impact on local jails, because existing medical and psychiatric resources within jails throughout the state are sufficient to meet the requirements of the bill.<sup>53</sup> The agency also anticipates that decreasing the time for transporting defendants will not result in a fiscal impact on sheriffs due to the fact that the total number of transports will not increase.<sup>54</sup>

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<sup>52</sup> The DCF Analysis at p. 6.

<sup>53</sup> *Id.*, p. 5.

<sup>54</sup> *Id.*, p. 6.

The Florida Sheriff's Association anticipates the provisions in the bill that address the delivery of certain psychotropic medications and timelines for transporting a defendant back to the committing jurisdiction will not have a negative fiscal impact on sheriffs.<sup>55</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.461, 916.107, 916.12, and 916.13.

This bill reenacts the following sections of the Florida Statutes: 394.658, 916.106, and 916.17.

**IX. Additional Information:**

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

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

**CS by Children, Families, and Elder Affairs on March 20, 2023:**

The Committee Substitute changes all instances of the word “patient” in the bill to “defendant” to provide consistency with the rest of ch. 916, F.S.

**B. Amendments:**

None.

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

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<sup>55</sup> See The Florida Sheriff's Association, E-mail from Allie McNair, Government Affairs Coordinator, *Re: DCF: SB 1412 – FSA Feedback* March 16, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).