

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

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

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

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1249 passed the House on March 2, 2022, and subsequently passed the Senate on March 4, 2022.

The state forensic system, administered by the Department of Children and Families (DCF), 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 conditionally released by the court if the person is not serving a prison sentence.

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 statutory requirements for forensic services.

CS/HB 1249 authorizes DCF to contract with a community mental health provider to operate a forensic facility co-located with a county jail.

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

The bill was approved by the Governor on April 6, 2022, ch. 2022-62, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Mental Health Services System

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults under chs. 394 and 397, F.S. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization or detoxification), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations and delivered through community-based providers.¹

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.² 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.³ 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.⁴

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.⁵ 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.⁶ If the defendant is found to be competent, the criminal proceeding resumes.⁷ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.⁸

State Forensic System

The state forensic system 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. The state forensic system treats a defendant sufficiently to restore competency (that is, the ability to understand and participate in the criminal court proceedings), and provides longer-term treatment for defendants judged guilty by reason of insanity. The system is governed by ch. 916, F.S., and administered by DCF.

¹ See chs. 394 and 397, F.S.

² *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).

³ *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

⁴ *Id.* See also ss. 916.12, 916.3012, and 985.19, F.S.

⁵ Rule 3.210, Fla.R.Crim.P.

⁶ *Id.*

⁷ Rule 3.212, Fla.R.Crim.P.

⁸ *Id.*

Offenders who are charged with a felony and adjudicated incompetent to proceed,⁹ and offenders who are adjudicated not guilty by reason of insanity, may be involuntarily committed to state civil¹⁰ and forensic¹¹ treatment facilities by the circuit court,¹² or in lieu of such commitment, may be released on conditional release¹³ by the circuit court if the person is not serving a prison sentence.¹⁴ 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.¹⁵

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.¹⁶

In Fiscal Year 2020-2021, there were 3,311 forensic commitments in Florida.¹⁷

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 Hospital¹⁸ and North Florida Evaluation and Treatment Center,¹⁹ and two privately-operated, maximum security forensic treatment facilities.²⁰ 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.²¹ In addition to general psychiatric treatment approaches and environment, specialized services include:²²

⁹ "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.

¹⁰ 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.

¹¹ 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.

¹² Sections 916.13, 916.15, and 916.302, F.S.

¹³ Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

¹⁴ Section 916.17(1), F.S.

¹⁵ Section 916.16(1), F.S.

¹⁶ Section 916.13(2), F.S.; section 916.15(3), F.S.

¹⁷ Department of Children and Families Long-Range Program Plan, p. 49, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23175&DocType=PDF> (last visited March 7, 2022).

¹⁸ 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 March 7, 2022).

¹⁹ Id. The North Florida Evaluation and Treatment Center has 193 beds.

²⁰ 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.

²¹ 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 March 7, 2022).

²² Id.

- 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.

Current law authorizes DCF to enter into contracts to carry out the requirements for forensic services under ch. 916, F.S., which includes contracting with mental health service providers.²³

Current law does not expressly authorize DCF to provide or contract for forensic services within or co-located with county jails, but does not prohibit it.

Effect of the Bill

State Treatment Facilities

CS/HB 1249 authorizes DCF to contract with a community mental health provider to operate a forensic facility co-located within a county jail.

The bill 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:

²³ 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).

None.

D. FISCAL COMMENTS:

None.