

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 242

SPONSOR: Committee on Children and Families

SUBJECT: Persons With Mental Illness

DATE: February 1, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 242 is the result of an interim project involving the role of county courts under ch. 916, F.S., responding to persons with mental illness who commit misdemeanors. Provisions in the bill include the following:

- Directing that strategies and community alternatives be defined in each service district of the Department of Children and Family Services for diverting from the criminal justice system to the civil Baker Act system persons with mental illness who are arrested for a misdemeanor. Each district's strategies are to be developed through written cooperative agreements between the department, the judicial and criminal justice systems, and the local mental health providers. The Louis de la Parte Florida Mental Health Institute is directed to review strategies in Florida and other states and to recommend to the Legislature those strategies that are most effective.
- Recommending improvements in the training curriculum and training efforts for law enforcement officers in identifying mental illness as delivered by the Criminal Justice Standards and Training Commission and the Department of Children and Family Services.
- Studying the concept of increasing court jurisdiction and supervision over persons with mental illness who are arrested for or convicted of a misdemeanor to assure compliance with an approved individualized treatment or service plan.
- Assessing the provision of in-jail mental health diagnostic and treatment services and reporting to the Legislature.
- Evaluating the effectiveness of the specialized mental health court established in Broward County to determine client and system outcomes and cost efficiencies and proposing recommendations for establishing similar special courts in other judicial circuits.

- Specifying that \$100,000 of general revenue be appropriated in the General Appropriations Act for Fiscal Year 1999-2000 to the Department of Children and Family Services for studying the concept of increasing court jurisdiction and supervision over persons with mental illness arrested for or convicted of a misdemeanor, evaluating the effectiveness of the specialized mental health court in Broward County, and providing consultation to the communities in the development of their diversion strategies.

II. Present Situation:

Statutory Provisions

Florida's mental health law, ch. 394 (Part I), F.S., the Baker Act, encourages local communities to provide mental health treatment to persons who exhibit non-violent criminal behavior rather than place them in the criminal justice system. Section 394.462,(1)(f) F.S., requires that a law enforcement officer who has custody of a person because of noncriminal or minor criminal behavior who meets the involuntary examination criteria in s. 394.463(1), F.S., transport that person to the nearest Baker Act receiving facility for a psychiatric examination. Transporting to receiving facilities does not always occur as many of these persons with mental health problems are taken to county jails. Data are not available, however, that specify the number or percentage of these persons who are taken to Baker Act receiving facilities as opposed to a county detention facility.

Chapter 98-92, Laws of Florida, amended the Forensic Client Services Act, ch. 916, F.S., by restricting commitment to the department to defendants charged with a felony who have been found to be incompetent to proceed due to mental illness, retardation, or autism or who have been acquitted of felonies by reason of insanity. Section 916.106(4), F.S., defines "court" as circuit court which excludes county court judges from having commitment authority.

Misdemeanants with Mental Illness

The issue of community safety and appropriate treatment alternatives for misdemeanants with mental illness is of great concern to Florida's county judges. Judges and other professionals in Florida's criminal system and mental health system find that many persons with mental illness who commit misdemeanors cycle in and out of the county jails because these persons do not have access to the appropriate mental health treatment and support services.

In the case of *Onwu v. Florida*, 692 So.2d 881 (Fla. 1997), the Florida Supreme Court ruled that only a circuit court as defined in s. 916.106(2), F.S., may commit a person to the department for services under ch. 916, F.S. Many county court judges continue to want the option of committing misdemeanants to the department under ch. 916, F.S. Prior to April, 1997, approximately 60 to 80 persons with mental illness who committed misdemeanors were committed to the Department of Children and Family Services each year by the county courts for placement in Florida's secure forensic units under the authority of ch. 916, F.S.

According to information gathered for the Committee's interim project, community experts believe that persons with mental illness continue to commit misdemeanors for the following reasons: 1) many persons are not diagnosed and treated in jail immediately after arrest, 2) many

persons who are stabilized in jail or in a mental health facility decompensate quickly when returning to their home because the appropriate psychiatric medications or other treatment modalities that help maintain mental stability are discontinued, and 3) there is insufficient management and monitoring of the client in the community to assure that service needs are being met. Poor coordination of existing resources and the lack of integration of mental health and criminal justice programs are cited by many experts as a major problem that hampers services to this population. The majority of the respondents to the Senate survey believe that placing misdemeanants with mental illness in secure expensive forensic facilities with persons who have committed serious offenses would “criminalize” persons with mental illness in order to obtain mental health services.

In-jail Mental Health Services

Counties are responsible for providing mental health care to jail inmates based on: 1) tort liability because the inmate is involuntarily detained and therefore cannot seek the required care and 2) minimum constitutional standards of care in correctional facilities through case law interpretation of the U.S. Constitution pursuant to the 8th amendment (cruel and unusual punishment) and the 14th amendment (due process of law).

Mental Health Court

In an attempt to expedite treatment services for the misdemeanant with mental illness, in May 1997, Chief Judge Dale Ross in the 19th Judicial Circuit appointed Ginger Lerner-Wren an acting circuit court judge in all matters relating to mental health, substance abuse, and developmental disabilities. This specialized court in Broward County focuses upon persons arrested for misdemeanor offenses who are mentally ill or mentally retarded and their need for appropriate treatment in a therapeutic environment as well as insuring the protection of the public. This mental health court meets daily for the judge to determine whether each defendant requires immediate psychiatric treatment in a hospital setting, whether mental competency is an issue, the specific types of community mental health services that may be needed, and whether there are public safety issues.

Research has not been conducted on the mental health court concept to determine its effectiveness with the misdemeanant mentally ill, but research conducted on drug courts by Columbia University’s National Center on Addiction and Substance Abuse found that drug courts provide closer, more comprehensive supervision and much more frequent monitoring of the client’s behavior than other forms of community supervision. Drug use and criminal behavior were found to be substantially reduced while offenders are participating in drug court.

Court Jurisdiction

States have been searching for effective strategies to engage persons with serious and persistent mental illness in community treatment, enhance compliance with treatment plans, and thereby prevent relapse and rehospitalization in the more costly inpatient programs. The costs of housing and treating these persons with mental illness who commit misdemeanors are a major responsibility for counties because these persons are usually detained in jail facilities. Some states are using court-ordered community treatment or involuntary outpatient treatment to enforce

treatment compliance. No studies have examined the extent to which outpatient commitment affects compliance and treatment when essential community services such as case management are consistently and aggressively provided.

III. Effect of Proposed Changes:

Senate Bill 242 directs the department to develop written cooperative agreements with the judicial system, criminal justice system, and the local mental health providers in each service district that define strategies and community alternatives for diverting from the criminal justice system to the civil Baker Act system persons with mental illness who are arrested for a misdemeanor. Minimal requirements for the agreements are specified such as consideration of pre-booking or post-booking interventions. The bill requires client population data, an analysis of available and unavailable resources, and the identification of key indicators consistent with performance based budgeting that will measure the impact of these strategies on the clients and on the community systems. The districts' diversion strategies, client data analysis, and identification of key indicators must be completed by October 1, 1999.

The Louis de la Parte Florida Mental Health Institute is directed to review the district diversion strategies as well as cost-effective strategies being used in communities in other states to divert misdemeanants from the criminal justice system to the mental health system. Based on this review, the Institute must recommend to the Legislature by January 1, 2001, those diversion strategies and treatment activities used by Florida or other states that have proven to be the most effective with the misdemeanor population. The Institute must include details about the cost savings that are associated with those programs, the results that can be expected based on the current level of resources, and any additional resources needed to adequately serve the misdemeanor population.

Senate Bill 242 directs the Florida Department of Law Enforcement and the department to jointly evaluate the extent and effectiveness of current training curricula and training efforts provided by the Criminal Justice Standards and Training Commission under s. 943.17, F.S., and by the department under ch. 394, Part I, F.S., for law enforcement officers in identifying mental illness and to prepare a joint report by December 31, 1999, that includes findings and recommendations for improvements.

Senate Bill 242 directs the department, in consultation with the Supreme Court, to contract with Louis de la Parte Florida Mental Health Institute to study the concept of increasing court jurisdiction and supervision over persons with mental illness who are arrested for or convicted of a misdemeanor to assure compliance with an approved individualized treatment or service plan. The department must prepare a report by December 31, 1999, that includes any recommendations for statutory or non-statutory policy changes.

The district forensic coordinators in the department are instructed to assess the provision of in-jail mental health diagnostic and treatment services and prepare a report of their findings, conclusions, and recommendations by December 31, 1999.

Senate Bill 242 directs the Florida Mental Health Institute to evaluate the effectiveness of the specialized mental health court established in Broward County to determine client and system outcomes and cost efficiencies and to make recommendations for establishing similar special

courts in other judicial circuits. The Florida Mental Health Institute must report to the Legislature on the findings of the evaluation including recommendations for any statutory revisions by October 1, 2000.

Senate Bill 242 specifies that \$100,000 of general revenue be appropriated in the General Appropriations Act for Fiscal Year 1999-2000 to the department to implement ss. 1, 3, and 6 of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An estimated \$100,000 of general revenue is needed to study the concept of increasing court supervision over the misdemeanor mentally ill population, to evaluate the effectiveness of the specialized mental health court in Broward County, and to provide program consultation to the districts in their preparation of the diversion strategies. Section 7 of the bill specifies that \$100,000 be appropriated in the 1999-2000 General Appropriations Act to the Department of Children and Family Services for these purposes (\$80,000 for reviewing the concept of increasing court supervision and evaluating the specialized mental health court and \$20,000 for consultation in diversion strategies).

The bill will increase the workload of the Department of Children and Family Services in all 15 districts and in the Mental Health Program Office, but it is anticipated that this increase can be handled within existing resources.

The bill could ultimately result in long range cost savings to the state and counties as diversion strategies are implemented that keep persons out of jail facilities, expensive inpatient programs and other treatment and training programs and as appropriate services are improved.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provisions of this bill reflect the recommendations made in the Interim Project Report 98-06, *Role of the County Courts Under Chapter 916, F.S., Responding to Persons with Mental Illness Who Commit Misdemeanors*. The interim project report concluded that very few local communities have implemented effective strategies for diverting from the criminal justice system to the civil Baker Act system persons with mental illness who are arrested for a misdemeanor. It was learned from persons who responded to the Senate survey that procedures and polices are needed to improve mental health services to the misdemeanants such as improving law enforcement training in identifying mental illness, greater communication and information sharing between the criminal justice system and mental health system, and greater supervision and case management of misdemeanants with mental illness to assure that psychotropic medications and other treatment modalities are continued.

The literature review substantiated the finding that persons with mental illness who are arrested for less serious, non-violent crimes can be appropriately diverted from the criminal justice system using pre-booking interventions (before formal charges are brought) and post-booking interventions (after the person has been arrested and jailed). Also, the literature discussed a number of successful collaborations throughout the country between law enforcement agencies and mental health professionals to ensure that timely and appropriate mental services are provided when needed.

VIII. Amendments:

None.