

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: PCS/SB 1150

INTRODUCER: Senator Storms

SUBJECT: Mental Health and Substance Abuse

DATE: March 23, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Pre-meeting
2.			JU	
3.			HA	
4.			RC	
5.				
6.				

I. Summary:

Proposed Committee Substitute for Senate Bill 1150 requires a court-ordered HIV test of an individual being transferred for mental health services whose bodily fluid comes in contact with the person providing transportation.

The bill specifies the Department of Children and Families' (DCF or "the department") priority population for eligibility to receive substance abuse and mental health services funded by the department.

The bill provides that DCF shall oversee the building code regulation enforcement of all secure mental health treatment facilities.

The bill authorizes the Agency for Health Care Administration's (AHCA or "the agency") in consultation with DCF to license facilities that integrate adult mental health crisis stabilization and adult addiction receiving services as adult crisis stabilization units and identifies their service population.

The bill requires the department to provide an annual forensic evaluator training course, and requires that each forensic evaluator be trained and provide proof of re-training every five years.

The bill requires that a defendant serving a sentence in the custody of the Department of Corrections (DOC) who is charged with a new felony or entitled to a mandatory appeal and is adjudicated incompetent to proceed due to mental illness or innocent by reason of temporary insanity remain in the physical custody of DOC. The bill provides a timeframe and process for competency hearings.

The bill provides a time-table for the transportation and commitment hearing of a defendant acquitted of a criminal charge by reason of temporary insanity and found to meet the criteria for involuntary commitment.

The bill requires DCF and AHCA to create a mental health plan that includes but is not limited to 1) information on mental health governance, target populations, and service needs 2) plans to reduce involvement with the criminal justice system and assist in an individual's reentry into the community 3) performance measures and reporting requirements for state and local implementation 4) strategies for a continuum-of-care for competency restoration.

The bill requires that the Office of Program Policy Analysis and Governmental Accountability conduct a study on mental health issues including information and state comparisons of mental health courts, funding, cost-containment strategies, and diversion programs.

This bill substantially amends ss. 394.462, 394.674, 553.80, 766.101, 916.111, 916.115, 916.13, 916.15, F.S., and creates s. 394.4996, F.S., and two un-numbered sections of law.

II. Present Situation:

Mental Health and Substance Abuse Services

Chapter 394, F.S., describes the criteria and process for the involuntary examination and treatment of a person who is believed to have a mental illness.¹ The statute authorizes law enforcement, certain mental health clinical professionals, or the court to require that an individual be involuntarily detained for evaluation for a period up to 72 hours.

In addition to procedural requirements for involuntary examination and voluntary and involuntary treatment, this part provides a framework for the public mental health service delivery system. The "front door" to that system is the public receiving facility. Receiving facilities admit persons for involuntary examination and are defined in the statute as "any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment."²

In many communities, the public receiving facility is a crisis stabilization unit (CSU). A CSU is defined as "a program that provides an alternative to inpatient hospitalization and that provides brief, intensive services 24 hours a day, seven days a week, for mentally ill individuals who are in an acutely disturbed state."³ The definition of "crisis stabilization unit" and licensure requirements for these programs are found in part IV of ch. 394, F.S., the Community Substance Abuse and Mental Health Services Act, and Rule 65E-12, F.A.C.

Chapter 397, F.S., provides criteria and procedures for the involuntary admission of an individual in an acute substance abuse crisis. A person meets the criteria for involuntary admission if he or she is substance-abuse impaired and because of that impairment has lost the power of self-control with respect to substance use and either is likely to harm himself or herself

¹ Section 394.463, F.S.

² Section 394.455(26), F.S.

³ Section 394.67(3), F.S.

or others or is in need of substance abuse services and his or her judgment has been so impaired that he or she is unable to appreciate the need for treatment or services.⁴

Substance abuse providers may be licensed by the department for one or several separate service components.⁵ Included in these licensed service components are addiction receiving facilities which are community-based facilities designated by the department to receive, screen, and assess clients found to be substance abuse impaired, in need of emergency treatment for substance abuse impairment, or impaired by substance abuse to such an extent as to meet the criteria for involuntary admission in s. 397.675, F.S., and to provide detoxification and stabilization.⁶ Addiction receiving facilities (ARFs) are state-owned, state-operated, or state-contracted programs licensed by the department and designated as secure facilities to provide an intensive level of care. Licensure requirements for the ARFs are found in Rule 65D-30.005, F.A.C.

Competency Restoration

Part II of Chapter 916, F.S., addresses forensic services for mentally ill individuals. The department is authorized to contract with accredited institutions to provide:⁷

- A plan to train community mental health professionals to perform forensic evaluations and to standardize the criteria and procedures to be used in evaluations;
- Clinical protocols and procedures consistent with the Florida Rules of Criminal Procedure;
- Training for professionals in applying protocols and procedures in performing evaluations and providing the court with reports; and
- A system to evaluate program success.

The department is required to annually provide the court with a list of mental health professionals approved as experts.⁸ The court is authorized to appoint no more than three experts to evaluate a criminal defendant's mental condition, including competency, insanity, and involuntary placement and treatment.⁹

A defendant is considered to be incompetent to proceed if he or she:

- Does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding; or
- Has no rational, as well as factual, understanding of the proceedings against him or her.¹⁰

In determining whether a defendant is competent to proceed, examining experts must consider, and detail in their reports, the defendant's capacity to:¹¹

⁴ Section 397.675, F.S.

⁵ Section 397.311(18), F.S.

⁶ Section 397.311(18)(a), F.S.

⁷ Section 916.111, F.S.

⁸ Section 916.115(1)(b), F.S.

⁹ Section 916.115(1), F.S.

¹⁰ Section 916.12(1), F.S.

¹¹ Section 916.12(3), F.S.

- Appreciate the charges or allegations;
- Appreciate the range and nature of possible penalties that may be imposed;
- Understand the adversarial nature of the legal process;
- Disclose to counsel pertinent facts;

Involuntary Commitment

The court is authorized to involuntarily commit defendants who are charged with a felony and adjudicated incompetent to proceed, upon a clear and convincing showing that:¹²

- The defendant is manifestly incapable of surviving alone or with support from others, including available services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself, which poses a real or present threat of substantial harm to the defendant's well-being and there is a substantial likelihood of harm to self or others in the near future; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or inpatient or outpatient settings, are inappropriate, and there is a substantial probability that the defendant can be restored to competency in the near future.

A defendant who is charged with a felony, adjudicated incompetent, and who meets criteria for commitment may be committed to DCF, and DCF is required to retain the defendant and provide treatment.¹³ Within six months of the defendant's date of admission, at the end of any period of extended commitment, or at any time that the administrator or designee determines that the defendant is competent, a report shall be filed with the court.¹⁴

III. Effect of Proposed Changes:

Section 1

The bill adds a provision to s. 394.462, F.S., relating to transportation to a mental health facility. The bill provides that if a law enforcement officer; employee of an emergency medical transport service, private transport company contracting with a county, or mobile crisis response service; or other agent designated by the county, department, or court comes in contact with or is exposed to the bodily fluid of the person being transported, the court will, upon request, order the person being transported to undergo HIV testing. The bill provides that:

- The testing be performed within 48 hours of the court order;
- The results of the test be disclosed to the law enforcement officer, employee, or agent no later than two weeks after the court receives the results; and
- The test results are not admissible in any subsequent court proceeding involving the being transported.

¹² Section 916.13(1), F.S.

¹³ Section 916.13(1), F.S.

¹⁴ *Id.*

The bill provides that an individual described above who comes into contact with a person's bodily fluid while transporting that person may obtain an HIV test from his or her county health department at no cost.

There are currently no provisions relating HIV testing within s. 394.462, F.S.

Section 2

The bill provides the department's priority population for eligibility to receive substance abuse and mental health services funded by the department. This priority population includes an adult mental health priority population, children's mental health priority population, and substance abuse priority population. The bill provides the Department of Children and Families (DCF or "the department") the authority to establish rules relating to client enrollment.

Section 3

The bill creates s. 394.4996, F.S., to authorize the Agency for Health Care Administration (AHCA or "the agency"), in consultation with the DCF, to license facilities that integrate services provided in an adult mental health crisis stabilization unit with services provided in an adult addictions receiving facility. Facilities providing such integrated services will be licensed by AHCA as adult crisis stabilization units and must meet all licensure requirements for such units.

The bill provides that a mental health crisis stabilization unit and addiction receiving facility may provide services to adults 18 years of age or older who meets:

- The criteria for voluntary admission for mental health treatment;¹⁵
- The criteria for involuntary examination for mental illness;¹⁶
- The criteria for voluntary admission for substance abuse;¹⁷ or
- The criteria for involuntary admission for substance abuse impairment.¹⁸

The bill authorizes the department and the agency to develop standards that address eligibility, clinical procedures, staffing requirements, operational, administrative, and financing requirements; and complaint investigation by rule, consistent with the criteria established in chs. 394 and 397, F.S., relating to mental health and substance abuse.

Section 4

The bill amends s. 766.101, F.S., to include a committee of employees, agents, or consultants of the department within the definition of a medical review committee for the purpose of reviewing activities of health care providers. The definition of "health care providers" is expanded to include community mental health centers and crisis stabilization units. Activities relating to peer review, utilization review, and mortality review of state hospitals and contracted community mental health providers by the department will be exempt from s. 286.011, F.S. and s. 24(b), Art.

¹⁵ Section 394.4625, F.S.

¹⁶ Section 394.463, F.S.

¹⁷ Section 397.601, F.S.

¹⁸ Section 397.675, F.S.

I of the State Constitution and will be confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

A bill enacting an exemption or substantially amending an existing exemption¹⁹ may not contain other substantive provisions.²⁰ **(See Constitutional Issues)**

Section 5

The bill amends s. 553.80, F.S., to provide DCF with responsibility for building code regulation enforcement for all secure mental health treatment facilities.

According to the DCF, the provision will provide greater security at secure mental health treatment facilities institutions by providing limited outside access to building plans. Maximum performance of the security measures requires minimum public exposure of the plans, design specifications, and construction. These security measures include:²¹

- Security fencing: perimeter and internal;
- Security camera systems: internal and external;
- Anti-helicopter devices;
- Motion detector systems: internal and external;
- Micro phonic, sound detecting systems;
- Secure partitions: occupied spaces and attic spaces;
- Secure fire evacuation areas;
- Underground drainage structure security grills;
- Air conditioning ductwork security grills;
- Wireless "man-down" personal alarm systems;
- Security lighting systems; and
- Security lock systems

According to DCF, The cost of private building inspection services is expected to be less than or equal to the fees paid to local government building officials.

Section 6

The bill amends s. 916.111, F.S., relating to the training of mental health experts. The bill requires the department to provide, at least annually, a forensic evaluator training course to give mental health professionals the opportunity to be placed on the forensic evaluator registry.

The bill provides that beginning on July 1, 2009, mental health professionals on the DCF's forensic evaluator registry will be required to have completed or retaken the required training within the previous five years to remain on the registry. The bill provides that the mental health professional is responsible for maintaining the proper documentation of his or her completion of the required training and providing current contact information to DCF during the five-year period.

¹⁹ Pursuant to s. 119.15(4)(b), F.S., an existing exemption is considered substantially amended if the exemption is expanded to cover additional records.

²⁰ Fla. Const. art. I, s. 24(c).

²¹ Department of Children and Families Policy Analysis, Issue #4h, July 1, 2008.

Section 7

The bill amends s. 916.115, F.S., relating to the appointment of experts, to provide that the following individuals may assist in the evaluation process as long as that individual's reports are overseen and signed by a supervisor who has completed the forensic evaluator training within the previous five years:

- Graduate students completing a practicum or internship;
- Psychological specialists or counselors; and
- Postdoctoral fellows

Section 8

The bill amends s. 916.13, F.S., relating to involuntary commitment of a defendant adjudicated incompetent to proceed to trial. The bill provides that if a defendant is serving a sentence in the custody of the Department of Corrections (DOC) and is charged with a new felony or is entitled to a mandatory appeal and is adjudicated incompetent to proceed due to mental illness, the defendant is required to remain in the physical custody of DOC. While in the custody of DOC, DCF is required to administer a lesson plan for competency restoration.

The bill requires the warden or designee to file a report with the court within 6 months of admission and every 12 months afterward, or when the warden or designee determines that the defendant has regained competency to proceed.

The bill provides that within 15 days after the court receives notification that the defendant is competent to proceed and no longer meets the criteria for continued commitment, the defendant is required to be transferred back to jail for a competency hearing. The bill provides that the competency hearing must be held 30 days after the court receives notification that the defendant is competent to proceed.

Section 9

The bill amends s. 916.15, F.S., to provide that when a defendant who is not serving a sentence in the custody of the Department of Corrections (DOC) is acquitted of a criminal charge by reason of insanity and has a mental illness and because of that illness is dangerous to himself or herself or others or is found to meet the criteria for involuntary commitment²² he or she must be involuntarily committed.

Current law provides that within six months of the date of admission and prior to the end of any period of extended commitment, or at any time the administrator or designee determines that the defendant no longer meets the criteria for continued commitment placement, the administrator or designee shall file a report with the court pursuant to the Florida Rules of Criminal Procedure.

The bill provides that the defendant must, pursuant to s. 916.107(10), F.S., be transported back to jail within 15 days of the court's receipt of notification that the defendant no longer meets the commitment placement criteria, for the purpose of holding a commitment hearing.

²² Section 916.13, F.S.

The bill provides that that commitment hearing must be held within 30 days of the court's receipt of notification that the defendant no longer meets the commitment placement criteria.

The bill provides that if an individual is adjudicated not guilty by reason of insanity for a felony committed while serving a sentence in the custody of DOC, that individual remains in the custody of DOC. The bill provides that within 30 days of the defendant's anticipated release date, DCF must evaluate the defendant and file a report requesting the return of the defendant to the court's jurisdiction to determine if the defendant still meets the criteria for continued commitment placement.

Section 10

The bill requires DCF and AHCA, in consultation with the Florida Substance Abuse and Mental Health Corporation and the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center, to prepare a plan relating to the provision and management of mental health services to be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2010. The plan must include but is not limited to:

- A review and evaluation of and recommendations concerning, a structure for governance of mental health services;
- A review and evaluation of and recommendations concerning, the development of methodologies to estimate a target population for mental health services, service needs and availability of services.
- Proposed guidelines for the development and implementation of local community-based mental health programs and services to reduce future involvement with the criminal justice system.
- Proposed guidelines for development and implementation of a program to facilitate the transition and reentry of an individual into the community.
- Performance measures and reporting requirement recommendations for state and local implementation;
- Proposed strategies for providing a continuum-of-care for competency restoration services.

Section 11

The bill requires the Office of Program Policy Analysis and Government Accountability, by January 2009, (OPPAGA) to study and make recommendations on the following:

- Florida's mental health court in comparison with that of other states;
- Florida's mental health funding in comparison with that of other states;
- Cost-containment strategies for mental health services in other states; and
- Florida's mental health diversion program in comparison with that of other states.

Section 12

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill may be construed to expand an existing public records exemption in s. 766.101, F.S., for DCF's health care provider review committee. A separate bill is needed to create or expand a public records exemption. Article I, s. 24(c) of the Florida Constitution requires a favorable vote by two-thirds of the members present and voting in each house of the Legislature.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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