

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 Judiciary Committee

BILL: CS/CS/SB 1150

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, and Senator Storms

SUBJECT: Mental Health and Substance Abuse

DATE: April 18, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Fav/CS
2.	Sumner	Maclure	JU	Fav/CS
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires that all personnel in public and private mental health programs and facilities receive a level II employment screening as set forth in ch. 435, F.S.

If law enforcement personnel or other emergency medical transport service providers transport an individual to or from a facility that provides mental health evaluations and they come in contact with the bodily fluid of that individual, the bill allows the law enforcement personnel or other transport provider to request that the court order an HIV test for that individual.

The bill specifies who is included in the Department of Children and Families' (DCF) priority population for purposes of being eligible 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 (AHCA) 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 that a defendant serving a sentence in the custody of the Department of Corrections (DOC) remain in the physical custody of DOC if that person is charged with a new felony or entitled to a mandatory appeal and is adjudicated incompetent to proceed due to mental illness or not guilty by reason of insanity. The bill provides a timeframe and process for competency hearings.

The bill specifies timeframes for the transportation and commitment hearing of a defendant acquitted of a criminal charge by reason of insanity and found to meet the criteria for involuntary commitment.

The bill requires that the department provide an annual forensic evaluator training course. The bill requires that experts appointed in incompetent-to-proceed cases be a psychiatrist, licensed psychologist, or physician. The bill requires that the experts complete DCF's forensic evaluator training within five years prior to conducting an evaluation. The bill requires all forensic evaluators, for both juvenile and adult incompetent-to-proceed cases, be trained and provide proof of re-training.

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; and 4) strategies for a continuum-of-care for competency restoration.

The bill requires that the Office of Program Policy Analysis and Government Accountability (OPPAGA) 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 the following sections of the Florida Statutes: 394.4572, 394.462, 394.67, 394.674, 553.80, 916.111, 916.115, 916.13, 916.15, 985.19. The bill creates section 394.4996, Florida Statutes, and two unnumbered sections of law.

II. Present Situation:

Level 2 screening Standards

“Level 2 screening standards” are described as security background investigations that are required as a condition of employment for all employees in positions designated by law as positions of trust or responsibility. The background investigations include, but are not limited to:

- Fingerprinting;
- Statewide criminal and juvenile record checks through the Florida Department of Law Enforcement; and

- Federal criminal records checks through the Federal Bureau of Investigation.¹

The Agency for Health Care Administration (AHCA) requires “level 2 screening” for mental health personnel. “Mental health personnel” as described in s. 394.4572 includes:

- All program directors;
- Professional clinicians;
- Staff members, and
- Volunteers

working in public or private mental health programs and facilities who have direct contact with unmarried patients under the age of 18 years.

Mental health personnel working in hospitals licensed under ch. 395, F.S. who have less than 15 hours per week of direct contact with patients or who are health care professionals licensed by AHCA are exempt from this screening.²

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.³ 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 of 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 of Children and Families] to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment.”⁴

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, 7 days a week, for mentally ill individuals who are in an acutely disturbed state.”⁵ 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

¹ Section 435.04(1), F.S.

² Section 394.4572(1)(c), F.S.

³ Section 394.463, F.S.

⁴ Section 394.455(26), F.S.

⁵ Section 394.67(4), F.S.

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 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.⁶

Substance abuse providers may be licensed by the department for one or several separate service components.⁷ 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.⁸ 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 ch. 916, F.S., addresses forensic services for mentally ill individuals. The department is authorized to contract with accredited institutions to provide:⁹

- 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.¹⁰ 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.¹¹

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.¹²

⁶ Section 397.675, F.S.

⁷ Section 397.311(18), F.S.

⁸ Section 397.311(18)(a), F.S.

⁹ Section 916.111, F.S.

¹⁰ Section 916.115(1)(b), F.S.

¹¹ Section 916.115(1), F.S.

¹² Section 916.12(1), F.S.

In determining whether a defendant is competent to proceed, examining experts must consider, and detail in their reports, the defendant's capacity to:¹³

- 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; and
- 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:¹⁴

- 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.¹⁵ 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.¹⁶

HIV Testing

According to the Department of Health (DOH), there are approximately two million HIV tests conducted in Florida every year. Approximately 300,000 of these are conducted by the DOH at no charge.¹⁷

Section 384.287, F.S., currently provides that law enforcement officers,¹⁸ Florida Department of Law Enforcement (FDLE) support personnel,¹⁹ firefighters,²⁰ or ambulance drivers, paramedics or emergency medical technicians who come into contact with a person in such a way that significant exposure²¹ occurs, while acting within the scope of employment, may request that the person be screened for sexually transmitted diseases. If the person who is the source of the

¹³ Section 916.12(3), F.S.

¹⁴ Section 916.13(2), F.S.

¹⁵ Section 916.13(2), F.S.

¹⁶ *Id.*

¹⁷ Telephone interview with Marlene Lalota, Prevention Director, Bureau of HIV/AIDS (March 28, 2008).

significant exposure will not voluntarily submit to testing, a court order may be sought that would require testing.

Section 384.287(4), F.S., provides that all screenings must be conducted by DOH or its authorized representative. Current law requires that the cost of screenings be borne by the employer.

III. Effect of Proposed Changes:

Section 1

Current law requires a level 2 employment screening for any person working with children with mental illness. The bill provides that all mental health personnel working in a public or private mental health program or facility who have direct contact with patients are required to have a level 2 employment screening. The bill eliminates an exemption from this requirement, specific to mental health personnel with less than 15 hours of contact with a patient per week. According to DCF, this standard is current practice required through contract. The bill will codify that practice in statute.

Section 2

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 may, upon a showing of probable cause, order the person being transported to undergo HIV testing. A sworn statement by the law enforcement officer, employee, or agent that a significant exposure has occurred constitutes probable cause for the issuance of the order by the court. 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 person being transported.

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 to HIV testing within s. 394.462, F.S. There are comparable provisions in s. 381.004, F.S., F.S., and s. 384.287, F.S. Both sections require that a court order for an HIV test or screening for a sexually transmitted disease, must be based on a

¹⁸ Section 943.10(14), F.S.

¹⁹ Section 943.10(11), F.S.

²⁰ Section 633.30, F.S.

²¹ Section 381.004(2)(c), F.S.

finding of probable cause. Both sections also provide that probable cause must be based on a sworn statement by a physician licensed under chs. 458 or 459, F.S. stating that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment.

Section 3

The bill amends s. 394.67(21), F.S., to remove an obsolete requirement that a residential treatment center for children and adolescents be under contract with DCF. It adds clarifying language to provide that the treatment centers are licensed by AHCA.

Section 4

The bill amends s. 394.674, F.S., by replacing the words "target groups" with "priority populations" when describing who is eligible to receive substance abuse and mental health services. It requires that those eligible to receive these funds must be a member of at least one of the DCF's priority populations. It provides that "priority populations" include an adult mental health priority population, children's mental health priority population, and substance abuse priority population. The bill provides the department with the authority to establish rules relating to client enrollment.

Section 5

The bill creates s. 394.4996, F.S., to authorize AHCA, in consultation with 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;²²
- Involuntary examination for mental illness;²³
- Voluntary admission for substance abuse;²⁴ or
- Involuntary admission for substance abuse impairment.²⁵

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.

²² Section 394.4625, F.S.

²³ Section 394.463, F.S.

²⁴ Section 397.601, F.S.

²⁵ Section 397.675, F.S.

Section 6

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, this 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:²⁶

- Security fencing: perimeter and internal;
- Security camera systems: internal and external;
- Anti-helicopter devices;
- Motion detector systems: internal and external;
- Microphonic 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 7

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.

Beginning on July 1, 2009, mental health professionals on DCF's forensic evaluator registry will be required to have completed or retaken the required training within the previous five years in order 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. The mental health professional must also provide current contact information to DCF.

Section 8

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:

²⁶ Department of Children and Families, 2008 Agency Proposal, Issue #4h.

- Graduate students completing a practicum or internship;
- Psychological specialists or counselors; and
- Postdoctoral fellows at the state's mental health treatment facility.

Section 9

The bill amends s. 916.13, F.S., relating to the 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. The bill requires that DCF provide a lesson plan for competency restoration, to be administered to the defendant by DOC.

The bill requires the warden or designee to file a report with the court within six 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 10

The bill amends s. 916.15, F.S., to provide that defendants who are serving a sentence in the custody of the Department of Corrections are not eligible for involuntarily commitment by reason of insanity.

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.

The bill provides 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 11

The bill requires that each determination of competency in a juvenile delinquency case be conducted in compliance with uniform procedures relating to competency to proceed and evaluation criteria.

The bill requires that each expert appointed to determine competency in a juvenile delinquency case be a psychiatrist, licensed psychologist, or physician and have completed the evaluator training within five years prior to conducting an evaluation for the court. The bill provides that beginning on July 1, 2009, experts on the DCF's 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 each expert is responsible for maintaining the proper documentation of his or her completion of the required training, and for providing current contact information to DCF during the five-year period.

Section 12

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 the 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; and
- Proposed strategies for providing a continuum-of-care for competency restoration services.

Section 13

The bill requires OPPAGA, by January 2009, to study and make recommendations on the following:

- Florida’s mental health courts in comparison with those 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 14

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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires that counties will have to provide free HIV testing when ordered by the court.

VI. Technical Deficiencies:

The bill requires that the basis for the determination of incapacity be conducted in such a way as to “ensure a uniform application” of the criteria enumerated in rule. This provision is unclear.

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.)

CS/CS by Judiciary on April 16, 2008:

The committee substitute clarifies the procedure for court-ordered HIV tests when law enforcement officers have been exposed to the bodily fluids of a person being taken into custody for mental health evaluations or services. The committee substitute also makes technical and conforming changes to the bill.

CS by Children, Families, and Elder Affairs on March 26, 2008:

The committee substitute made the following changes:

- Confirms the statute to current practice regarding the background screening requirements for personnel in public and private mental health programs and facilities to require level 2 screening for all personnel who work with persons with a mental illness.
- Removes an outdated requirement that a residential treatment center for children and adolescents be under contract with the DCF and more accurately describes them as being licensed by AHCA.
- Adds individuals with co-occurring mental illness and substance abuse disorders to DCF's priority population for receiving substance abuse and mental health services.
- Adds a new section addressing forensic evaluator training in juvenile-incompetent-to-proceed cases, to be consistent with the provisions relating to adult forensic evaluator training.

- B. **Amendments:**

None.