

**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 Appropriations

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BILL: PCS/CS/SB 604 (907278)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Judiciary Committee; and Senator Diaz de la Portilla and others

SUBJECT: Mental Health Services in the Criminal Justice System

DATE: March 2, 2016

REVISED: 3/3/16

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>C. Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>A. Brown</u>	<u>Pigott</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>A. Brown</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 604 expands the authority of courts to use treatment-based mental health and substance abuse treatment programs and specifies minimum requirements of those programs. Among the changes in the bill, the bill expands the eligibility criteria for these programs to enable the participation of children in delinquency court and veterans who were released under a general discharge. The bill authorizes dependency courts to require persons having or seeking custody of a child to participate in certain mental health programs. Other provisions of the bill address the designation of some county courts as “criminal county courts” for certain functions, county-funded mental health court programs and a forensic hospital diversion pilot program.

The bill encourages counties to establish and fund treatment-based mental health court programs. The bill also authorizes courts to admit defendants, on a voluntary basis, at both the pretrial intervention and post-adjudicatory level into the programs. The bill further encourages coordination among various state agencies, local government, and law enforcement agencies to facilitate these programs.

Contingent upon an appropriation by the Legislature, each judicial circuit must establish at least one coordinator position for treatment-based mental health court programs. Each judicial circuit must annually report data on the program to the Office of the State Courts Administrator (OSCA) for purposes of program evaluation.

The bill creates the Forensic Hospital Diversion Pilot Program, which replicates the model of the Miami-Dade Forensic Alternative Center in three additional counties. In addition to Miami-Dade, the Department of Children and Families (DCF) may implement the program in Escambia, Hillsborough, and Okaloosa counties. The purpose of the program is to divert incarcerated defendants found mentally incompetent to proceed, or not guilty by reason of insanity, into a therapeutic setting that offers beds and community outpatient treatment.

Implementation of some components of the bill are contingent upon appropriations or sufficient existing resources. The cost to implement the pilot program is \$6.4 million, but the bill specifies that the pilot program may be implemented if existing resources are available on a recurring basis. Additionally, the cost of employing at least one mental health coordinator in each county, as authorized by the bill, would require significant funding, but this provision is contingent on an annual appropriation by the Legislature. See Section V.

The bill is effective on July 1, 2016.

## II. Present Situation:

### Problem-solving Courts

A problem-solving court is a type of specialty court designed to address specific needs of a defendant, including:

- Drug courts;
- Veterans' courts; and
- Mental health courts.<sup>1</sup>

A veteran is defined as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only, or who later received an upgraded discharge under honorable conditions.<sup>2</sup>

Both pretrial intervention and post-adjudicatory cases may be referred to a problem-solving court.<sup>3</sup> A defendant who is eligible to participate in a problem-solving court may request that the court transfer the case to another county to receive treatment.<sup>4</sup>

Across the state:

- 17 counties operate felony veterans' courts;
- 38 counties operate felony drug courts; and
- 18 counties operate mental health courts.<sup>5</sup>

Offenders sentenced in problem-solving courts to felony probation are supervised by Department of Corrections' probation officers.

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<sup>1</sup> Section 910.035(5)(a), F.S.

<sup>2</sup> Section 1.01(14), F.S.

<sup>3</sup> Section 910.35(5)(d)1. and 2., F.S.

<sup>4</sup> Section 910.35(5)(b), F.S.

<sup>5</sup> Department of Corrections, *2016 Agency Legislative Bill Analysis* (Nov. 12, 2015) (on file with the Senate Committee on Judiciary).

## **Pre-trial Intervention in Criminal Cases**

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.<sup>6</sup>

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.<sup>7</sup>

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The defendant does not have the right to a public defender unless the defendant is subject to incarceration if convicted.<sup>8</sup> If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.<sup>9</sup>

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.<sup>10</sup>

## **Veterans Programs and Courts for Criminal Offenders**

### ***The Use of Veterans' Courts Nationally***

A 2012 national survey found that 71 percent of participants in veterans' courts had experienced trauma while serving in the military.<sup>11</sup> More recently in 2014, a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."<sup>12</sup>

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<sup>6</sup> A misdemeanor is punishable by up to a 1 year term in a county jail and a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a) through (d), F.S.

<sup>7</sup> Section 948.08 (2), F.S.

<sup>8</sup> Section 948.08(3) and (4), F.S.

<sup>9</sup> Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

<sup>10</sup> Section 948.08(1), F.S.

<sup>11</sup> Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

<sup>12</sup> *Id.*

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.<sup>13</sup>

### ***Veterans' Courts in Florida Law***

The 2012 Florida Legislature placed into law the "T. Patt Maney Veterans' Treatment Intervention Act."<sup>14</sup> The law:

- Recognizes veterans' courts;
- Requires courts to hold a pre-sentencing hearing if a combat veteran alleges military-related injury, to determine if the defendant suffers from certain conditions, such as post-traumatic stress disorder, a traumatic brain injury, or a substance abuse disorder due to military service;
- Establishes pretrial and post-adjudication intervention programs for combat veterans having pending criminal charges or convictions; and
- Enables counties to establish programs to divert eligible defendants who are veterans into treatment programs.

### ***Veterans' Courts***

The chief judge of a judicial circuit may establish a Military Veterans and Service Members Court Program to serve the special needs of veterans and service members who are convicted of criminal offenses.<sup>15</sup> In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.<sup>16</sup>

### ***Pre-trial Intervention Programs***

Veterans charged with misdemeanors<sup>17</sup> or felonies<sup>18</sup> may be eligible to participate in diversion programs. However, veterans must not be charged with a disqualifying felony offense. Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;

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<sup>13</sup> *Id.*

<sup>14</sup> Senate Bill 138 (ch. 2012-159, Laws of Fla.).

<sup>15</sup> Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

<sup>16</sup> The authority for Veterans' Courts Programs is in ch. 394, F.S., which addresses mental health. Section 394.47891, F.S.

<sup>17</sup> Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

<sup>18</sup> Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

- Aggravated stalking; and
- Treason.<sup>19</sup>

Prior to a veteran's placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.<sup>20</sup>

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

### ***Post-adjudication Treatment Programs***

Veterans and service members<sup>21</sup> on probation or community control who committed a crime on or after July 1, 2012, and who suffer from a military-related mental illness, a traumatic brain injury, or a substance abuse disorder, may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.<sup>22</sup>

## **Forensic Facilities and Mental Health Treatment for Criminal Defendants**

### ***State Forensic System***

Chapter 916, F.S., governs secure forensic facilities that are under the jurisdiction of the Department of Children and Families (DCF). The state forensic system is a network of state facilities and community services for persons who have mental health issues and who are involved with the criminal justice system.

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<sup>19</sup> Section 948.06(8)(c), F.S.

<sup>20</sup> Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

<sup>21</sup> Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. (Section 250.01(19), F.S.).

<sup>22</sup> Section 948.21, F.S.

Two types of mentally ill defendants charged with felonies are eligible for involuntary commitment:

- Persons found incompetent to proceed<sup>23</sup> to trial or the entry of a plea; and
- Persons found not guilty by reason of insanity.<sup>24</sup>

Forensic treatment is provided in the following settings:

- Separate and secure forensic facilities;
- Civil facilities; and
- Community residential programs or other community settings.

Circuit courts have the option of committing a person to a facility or releasing the person on conditional release.<sup>25</sup> Conditional release is release into the community, accompanied by outpatient care and treatment.<sup>26</sup> The committing court retains jurisdiction over the defendant while the defendant is either under involuntary commitment or conditional release.<sup>27</sup>

The DCF oversees two state-operated 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. In the 2011-2012 fiscal year, the appropriation for state forensic facilities was \$139 million from the General Revenue Fund.<sup>28</sup>

### *Miami-Dade Forensic Alternative Center*

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults who have lesser felony offenses and are not a danger to the community.<sup>29</sup> The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.<sup>30</sup> The MDFAC currently operates a 16-bed facility at a daily cost of \$284.81 per bed.<sup>31</sup>

### **III. Effect of Proposed Changes:**

This bill expands the authority of courts to use treatment-based mental health and substance abuse treatment programs and specifies minimum requirements of those programs. The premise of the bill is that some who become involved with the criminal justice system are less likely to become involved in the future if they receive treatment for mental health or substance abuse issues.

<sup>23</sup> Mental incompetence to proceed is defined in s. 916.12(1), F.S.

<sup>24</sup> Section 916.105(1), F.S.; The Florida Rules of Criminal Procedure define what is meant by “not guilty by reason of insanity,” rather than the statutes. Section 916.15(1), F.S.

<sup>25</sup> Section 916.17(1), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 916.16(1), F.S.

<sup>28</sup> Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-108, The Forensic Mental Health System* (Sept. 2011).

<sup>29</sup> Department of Children and Families (DCF), *2016 Agency Legislative Bill Analysis* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).

<sup>30</sup> The Florida Senate, *supra* note 28.

<sup>31</sup> DCF, *supra* note 29, at 2.

### **Judicial Proceedings Relating to Children**

The bill amends legislative findings and intent under s. 39.001, F.S., for mental health treatment to be included in dependency court services and for the state to contract with mental health service providers for such services.

The bill amends s. 39.507, F.S., to allow a dependency court to:

- Order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation;
- Require participation of such person in a mental health court program or a treatment-based drug court program; and
- Oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

The bill amends s. 39.521, F.S., to authorize a court, with jurisdiction over a child that has been adjudicated dependent, to:

- Require the person who has custody or is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation;
- Require the person to participate in and comply with a mental health court program or drug court program, and
- Oversee the progress and compliance by the person who has custody or is requesting custody of a child.

### **Involuntary Outpatient Placement**

The bill amends s. 394.4655, F.S., relating to involuntary outpatient placement for mental health services, to define “court” to mean a circuit court or a criminal county court. The bill also defines “criminal county court” to mean a county court exercising its original jurisdiction in a misdemeanor case under s. 34.01, F.S.

Under the bill, if a person has been ordered into involuntary outpatient placement and continues to meet the criteria for such placement, the mental health service provider with which the person has been placed must file a petition for continued involuntary outpatient placement in the court that issued the order for placement, and hearings on those petitions will be held by the court that issued the order for placement. Under current law, such petitions must be filed in circuit court and the hearings must be held by the circuit court.

The bill amends ss. 394.4599, 394.463, 394.455, 394.4615, and 790.065, F.S., to conform those sections to the functions of a criminal county court versus a circuit court or to update cross-references to changes made in the bill.

### **Eligibility for Participation in a Problem-Solving Court**

The bill expands the population who may be served through a problem-solving court to include children who are enrolled in delinquency pretrial intervention programs.

The bill clarifies that:

- Service members are eligible to participate in problem-solving courts; and
- Veterans and service members may participate in a Military Veterans and Service Members Court Program as part of a pretrial intervention program.

Under current law, a veterans' court serves veterans who have been released from military service through an honorable discharge. The bill makes veterans who have been discharged or released under a less than honorable discharge also eligible to participate in veterans' court.

### **Treatment-based Mental Health Court Programs**

#### ***Creation of the Treatment-based Mental Health Court Program***

This bill authorizes counties to establish and fund treatment-based mental health court programs. The program facilitates the provision of therapeutic mental health treatment for persons who have mental health issues who are in the criminal justice system. Participation by defendants is voluntary.

The program may apply to:

- Pretrial intervention programs;
- Post-adjudicatory treatment-based mental health court programs; and
- Court review of the status of compliance or noncompliance of sentenced defendants.

In determining the suitability of a post-adjudicatory treatment-based mental health court program, for a particular defendant, the court must review the defendant's:

- Criminal history;
- Mental health screening outcome;
- Amenability to services of the program;
- Total sentence points; and
- Agreement to enter the program.

The court must also consider the recommendation of the state attorney and the victim.

If a defendant sentenced to a post-adjudicatory mental health court program is charged with a violation of probation or community control while in the program, the judge of the program will hear the violation of probation or community control case.

This bill encourages coordination among various state agencies, local government, and law enforcement agencies to establish and support these programs.

Contingent upon an appropriation by the Legislature, each judicial circuit is required to establish at least one coordinator position for the treatment-based mental health court program to coordinate responsibilities of participating agencies and service providers. The bill requires mental health court programs to collect client-level data and programmatic information to evaluate the program. Of the information collected, each mental health court program must then report programmatic information and aggregate data to the Office of the State Courts Administrator (OSCA).



If a county establishes a treatment-based mental health court program, the county must secure funding from sources other than the state for costs not otherwise required under the state constitution for state court system funding.<sup>32</sup> Agencies of the state executive branch may provide funding for the program and counties may enter into inter-local agreements for the collective funding of these programs.

The bill authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based mental health court program. Members of the committee are:

- The chief judge or his or her designee serving as chair;
- The judge of the treatment-based mental health court program, unless otherwise designated by the chief judge or his or her designee;
- The state attorney and the public defender;
- Treatment-based mental health program coordinators;
- Community representatives and treatment representatives; and
- Any other person whom the chair deems appropriate.

### ***Pretrial Intervention Mental Health Court Programs***

Current law authorizes courts to establish specialty pretrial intervention programs for persons charged with misdemeanor or felony crimes.

#### Misdemeanor Program for Adults

Under the bill, a misdemeanor pretrial mental health court program is included as a type of pretrial intervention program. A defendant who is charged with a misdemeanor and identified as having a mental illness is eligible to participate in the program.

#### Felony Program for Adults

Current law authorizes a court to voluntarily admit a defendant who is a veteran released from military service under an honorable discharge into a pretrial veterans' treatment intervention program. This bill authorizes veterans who were released from military service under a less than honorable discharge to participate in a pretrial intervention program.

The bill specifies how a veteran charged with a felony qualifies to participate in a pretrial mental health program. To be eligible to participate, the defendant:

- Must be identified as having a mental illness;
- Must not have been convicted of a felony; and

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<sup>32</sup> Section 29.004, F.S., provides that pursuant to s. 14, Art. V of the State Constitution, state revenue funding for the state court system includes funding for appointed and elected judges; juror compensation and expenses; reasonable court reporting and transcription services; court administration; and case management, including the initial review and evaluation of cases, case monitoring, tracking, and coordination; and service referral, coordination, monitoring, and tracking for treatment-based drug court programs.

- Must be charged with a nonviolent felony<sup>33</sup> or certain violent felonies if the state attorney and the victim consent.<sup>34</sup>

The court retains jurisdiction over the disposition of the pending charges. If the court finds in writing that the defendant has successfully completed the program, the court shall order the dismissal of the criminal charges. If the court finds that the defendant has failed to successfully complete the program, the case may proceed to prosecution.

#### Delinquency Pretrial Intervention Program for Children

The bill establishes a pretrial intervention program for children who have been identified as having a mental illness. Treatment under the program is to be based on the clinical needs of the child and participation in the program is voluntarily. To qualify:

- The child must not have been previously adjudicated for a felony; and
- The criminal charge that is currently pending is limited to a misdemeanor, a nonviolent felony,<sup>35</sup> or certain forcible felonies, with victim consent.<sup>36</sup>

At the end of the pretrial intervention period, the court will determine how to proceed with the case, based on the recommendation of the state attorney and the program administrator and whether the child has successfully completed the program. If the court dismisses the charges after a child successfully completes a mental health court program, and if the child otherwise qualifies, he or she may have his or her arrest record and plea of no lo contendere expunged.

#### ***Post-conviction Treatment-based Mental Health Court Program***

Regardless of how a defendant would rank under the Criminal Punishment Code, a court is authorized to place a defendant convicted of a felony or a felony violation of probation or community control into a post-adjudicatory treatment-based mental health court program if:

- The offense is a nonviolent felony;<sup>37</sup>
- The defendant is amenable to mental health treatment, including taking prescribed medication; and
- The court determines the defendant is suitable for placement, based on criteria identical to that required for assessments into the program of other defendants.

A court may also consider a defendant for the program for the offenses of certain forcible felonies after the court has considered a victim statement or testimony, if provided by the victim.<sup>38</sup>

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<sup>33</sup> A nonviolent felony is defined in the bill as an offense of burglary or trespass listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony.

<sup>34</sup> These offenses are resisting arrest of an officer with violence; battery on a law enforcement officer; or aggravated assault.

<sup>35</sup> A nonviolent felony is defined in the bill as an offense of burglary or trespass listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony.

<sup>36</sup> These offenses are resisting arrest of an officer with violence; battery on a law enforcement officer; or aggravated assault.

<sup>37</sup> A nonviolent felony is defined in the bill as an offense of burglary or trespass listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony.

<sup>38</sup> These offenses are resisting arrest of an officer with violence; battery on a law enforcement officer; or aggravated assault.

After a court orders placement of a defendant into a treatment-based mental health program, jurisdiction of the case transfers from the sentencing court to the post-adjudicatory treatment-based mental health court program for the interim that the defendant is in the program. Satisfactory completion of the program is a condition of the defendant's probation or community control.

The court may impose specialized treatment for probationers or community controllees who are veterans or service members and whose crime is committed after July 1, 2016 (the effective date of this bill). Specialized treatment will address a defendant's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, as appropriate.

The bill provides a definition of "mental health probation" and authorizes the DOC to establish designated and trained mental health probation officers to support individuals under supervision of the mental health court program. Under the bill, "mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on the underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Mental health probation must be supervised by officers with restricted caseloads who are sensitized to the unique needs of individuals with mental health disorders, and who will work in tandem with community mental health case managers assigned to the defendant. The bill provides that caseloads of such officers should be restricted to a maximum of 50 cases per officer in order to ensure an adequate level of staffing and supervision.

## **Forensic Services**

### ***Forensic Hospital Diversion Pilot Program***

This bill authorizes the DCF to create the Forensic Hospital Diversion Pilot Program (pilot program). The pilot program would divert incarcerated defendants who are found mentally incompetent to proceed at trial or not guilty by reason of insanity from state forensic mental health treatment facilities to community outpatient treatment. The goals of the pilot program are to provide competency-restoration and community-reintegration services. Services would be provided in either a locked residential treatment facility or a community-based facility, based on public safety, the needs of the individual, and available resources.

Under the bill, if DCF decides to implement the pilot program, it will be implemented in Escambia, Hillsborough, Miami-Dade, and Okaloosa counties. The model for the pilot program is the Miami-Dade Forensic Alternative Center (MDFAC), currently in operation.

The bill specifies that the DCF may implement the pilot program if existing resources are available on a recurring basis. The bill authorizes the DCF to request budget amendments under ch. 216, F.S., to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot program.

Participation in the pilot program is limited to persons who are:

- 18 years of age and older;
- Charged with a second or third degree felony;

- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by the DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in conjunction with the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training for judges in the pilot program counties regarding the community forensic system.

The DCF is authorized to adopt rules to facilitate the provisions of the bill relating to the pilot program.

The bill takes effect July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not appear to contain a mandate because the bill authorizes but does not require counties to spend funds.

##### **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:**

#### **Judicial Proceedings Relating to Children**

The Office of the State Courts Administrator (OSCA) advises that changes made by PCS/CS/SB 604 to ch. 39, F.S., to authorize dependency courts to require persons seeking custody of a child to submit to a mental health assessment and participation in a mental health court program, may increase the workload of the state courts system by

increasing the number of mental health court cases. However, the OSCA cannot determine how many additional mental health court cases, if any, would result.<sup>39</sup>

### **Involuntary Outpatient Placement**

The bill's designation of "criminal county courts" and the authorization of criminal county courts to order involuntary outpatient placement could impact judicial workload. A criminal county court would have to hold hearings on the petitions filed for involuntary outpatient placement. Further, the criminal county court would have to hold hearings for cases where continued outpatient placement is sought. However, the OSCA cannot determine how many additional outpatient placement petitions and cases, if any, would result from allowing criminal county courts to order outpatient placement.<sup>40</sup>

### **Forensic Hospital Diversion Pilot Program**

The bill authorizes the Department of Children and Families (DCF) to replicate the Miami-Dade Forensic Alternative Center (MDFAC) as a pilot program in Escambia, Hillsborough, Miami-Dade, and Okaloosa counties. However, the authorization is contingent on the availability of existing resources on a recurring basis.

The DCF's current contract with the MDFAC costs almost \$1.6 million annually. Funding this model for the pilot program in three counties will require funding of almost \$6.4 million. The DCF anticipates that the redirection of \$6.4 million from the department's budget could impact or decrease the provision of services to other DCF clients. Therefore, the DCF would be unable to absorb the additional costs and would need additional funding for the pilot program.<sup>41</sup>

Cost savings may be realized, however, based on the success of the pilot program. The MDFAC is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. Doing so may shorten the process, as defendants are less likely to decompensate in the MDFAC compared to a jail setting and are more likely lose competency again in a jail setting due to the stress and the less-than-optimal treatment provided.<sup>42</sup> Commitment bed and court cost savings are expected through this bill. The experience of the MDFAC indicates that competency is restored more quickly through the pilot program, which requires 100 days on average, than at state facilities, which require 125 days on average.<sup>43</sup>

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<sup>39</sup> Email from OSCA staff, Feb. 11, 2016, on file with staff of the Senate Appropriations Subcommittee on Health and Human Services.

<sup>40</sup> *Id.*

<sup>41</sup> DCF, *supra* note 29.

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

<sup>43</sup> *Id.*

In Fiscal Year 2011-2012, the average cost for a secure forensic bed was \$333 per day. A bed at the MDFAC cost much less; \$229 a day in 2011-12.<sup>44</sup> However, the current cost per bed per day at the MDFAC is \$285 a day.<sup>45</sup>

### **County Expenses for Treatment-Based Mental Health Court Programs**

The bill encourages, but does not require, counties to create and fund treatment-based mental health court programs. The bill also, contingent upon appropriations, requires each judicial circuit to establish at least one coordinator for the treatment-based mental health programs within the circuit.

### **Problem-solving Courts**

The OSCA anticipates additional judicial and court workload from:

- Creating mental health courts, as problem-solving court cases require more extensive hearings and time monitoring than traditional criminal cases. However, cost savings may be realized from lower recidivism and costs of incarceration.
- Expanding the eligibility criteria for veterans. Like other problem-solving courts, veterans' courts require more judicial time than traditional criminal cases.

The bill's fiscal impact on the state courts system is indeterminate, due to the lack of data needed to gauge the impact on judicial workload.<sup>46</sup>

The DOC expects the bill to have a minimal impact on its supervised offender population, as felony offenders are already being referred by pretrial intervention drug courts or are sentenced to probation or community control by felony circuit courts and problem-solving courts. Some of these referrals include special conditions to address mental health or substance abuse treatment.<sup>47</sup>

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.001, 39.507, 39.521, 39.4655, 39.4599, 39.463, 39.455, 39.4615, 39.47891, 790.065, 910.035, 948.001, 948.01, 948.06, 948.08, 948.16, 948.21, and 985.345.

<sup>44</sup> The Florida Senate, *supra* note 28.

<sup>45</sup> DCF, *supra* note 29, at 2.

<sup>46</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).

<sup>47</sup> Department of Corrections, *supra* note 5, at 4.

This bill creates the following sections of the Florida Statutes: 394.48792 and 916.185.

This bill reenacts the following sections of the Florida Statutes: 397.334 and 948.012.

## **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on February 17, 2016:**

The committee substitute:

- Removes provisions allowing county court judges to release misdemeanor defendants on conditional release;
- Adds Okaloosa County to the list of counties in which the Department of Children and Families may implement the Forensic Hospital Diversion Pilot Program;
- Authorizes dependency courts to require persons having or seeking custody of a child to participate in certain mental health programs; and
- Creates a designation for some county courts as “criminal county courts” for involuntary outpatient placement and certain other functions.

### **CS by Judiciary on November 17, 2015:**

- Establishes mental health probation as a form of specialized supervision that emphasizes mental health treatment;
- Clarifies that the mental health court program must collect client-level data but report aggregate data to the Office of the State Courts Administrator; and
- Makes technical clarifying changes.

- B. **Amendments:**

None.