

**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 Judiciary

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BILL: SB 604

INTRODUCER: Senators Diaz de la Portilla and Hutson

SUBJECT: Mental Health Services in the Criminal Justice System

DATE: November 16, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

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 and veterans who were released under a general discharge. The bill also allows courts to grant conditional release to some defendants to enable them to receive treatment to become competent for trial or who would otherwise be committed subsequent to being found not guilty by reason of insanity. Other provisions of the bill address county-funded mental health court programs and a forensic hospital diversion pilot program.

**Mental Health Court Programs**

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 postadjudicatory level into the programs. The bill further encourages coordination among various state agencies, local government, and law enforcement agencies to facilitate these programs.

If annually appropriated 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.

**Forensic Hospital Diversion Pilot Program**

This bill creates the Forensic Hospital Diversion Pilot Program, which replicates the model of the Miami-Dade Forensic Alternative Center into 2 additional counties. In addition to Miami-Dade, the Department of Children and Families (DCF) will implement the program in Escambia

and Hillsborough 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 which offers beds and community outpatient treatment.

### **Fiscal Impact**

Due to unavailable data, the fiscal impact of the bill is unknown. However, the costs of operating the Forensic Hospital Diversion Pilot Program and the cost of funding coordinators for mental health programs in each circuit are likely significant.

## **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 a:

- Drug court;
- Veterans' court; and
- Mental health court.<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 postadjudicatory 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 offender 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 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 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 each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers 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***

To be eligible to participate in diversion programs, veterans can be charged with misdemeanors<sup>17</sup> or felonies.<sup>18</sup> 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 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 ten 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 servicemembers<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. 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 these 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:

- Aged 18 years old and older;
- Who have been found by a court to be incompetent to proceed due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.<sup>29</sup>

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.<sup>30</sup>

Since the 2011-2012 fiscal year, all but two of the persons who served in the program were adjudicated incompetent to proceed. The Center currently operates a 16-bed facility at a daily cost of \$284.81 per bed.<sup>31</sup>

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<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), *2015 Agency Legislative Bill Analysis* (Mar. 4, 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.

### 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.

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

A problem-solving court is a type of specialty court, including a drug court, a veterans' court, and a mental health court. This 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:

- Servicemembers are eligible to participate in problem-solving courts; and
- Veterans and servicemembers may participate in a Military Veterans and Servicemembers 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;
- Postadjudicatory 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 postadjudicatory 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.

If annually appropriated by the Legislature, each judicial circuit shall 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 each judicial circuit to annually report sufficient data about the program to the Office of the State Courts Administrator (OSCA) for purposes of program evaluation, including:

- Client-level data – Offenses resulting in mental health court referral or sentence, treatment compliance, completion status, offenses committed during treatment and sanctions, frequency of court appearances, and units of service.
- Programmatic data – Referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

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 interlocal 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.

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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.



### 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
- 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 charged with crimes who have been identified as having a mental illness and who wish to participate 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 shall 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, if the child otherwise qualifies, he or she may have his or her arrest record and plea of no lo contendere expunged.

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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.

### ***Postconviction 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 postadjudicatory 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>

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 postadjudicatory 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 bill authorizes the Department of Corrections to establish designated mental health probation officers to support participating defendants.

The court may impose specialized treatment for probationers or community controllees who are veterans or servicemembers 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.

### **Forensic Services**

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

This bill authorizes the Department of Children and Families to create the Forensic Hospital Diversion Pilot Program (Program). The 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 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 Program, the Program will be implemented in Escambia, Hillsborough, and Miami-Dade counties. The model for the Program is the Miami-Dade Forensic Alternative Center, currently in operation.

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<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.

Participation in the 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 on the community forensic system.

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

#### ***Conditional Release***

Current law authorizes circuit courts to order mentally deficient or mentally ill defendants who are charged or convicted of felonies to be released on conditional release as an alternative to involuntary commitment to a forensic facility. This bill authorizes county courts to order the conditional release of a misdemeanor defendant solely for the purpose of providing outpatient care and treatment.

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:

**Forensic Hospital Diversion Pilot Program**

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

A current-year analysis has been requested, but not provided by DCF. The following is based on last year's analysis:

The DCF's current contract with the center is almost \$1.5 million. Funding this model for three programs will require \$4.5 million. The DCF anticipates that the redirection of \$4.5 million from the department's budget for this program could impact or decrease the provision of services to other department clients. Therefore, the DCF would be unable to absorb the additional costs.

Cost savings may be realized, however, based on the success of the pilot program. The program 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, or lose competency again from the stress and the less-than-optimal treatment provided in a jail setting. Commitment bed and court cost savings are expected through this bill. Competency is restored more quickly through the program, which requires 103 days on average, than at state facilities, which require 146 days on average.

In Fiscal Year 2011-12, the average cost for a secure forensic bed was \$333 per day. A bed at the program cost much less, at \$229 a day in 2011-12.<sup>39</sup> However, the current cost per bed per day at the program is \$285 a day.<sup>40</sup>

**Conditional Release of Misdemeanor Defendants**

Current law allows only circuit courts to release felony defendants who are mentally ill on conditional release. This bill additionally allows county judges to release misdemeanor defendants who are mentally ill on conditional release. For FY 2012-13, the Office of the State Courts Administrator reported a total of 308,467 misdemeanor filings in the state.<sup>41</sup> The current adult population in Florida is 15.6 million, with a serious mental illness rate ranging on average at 5.4 percent.

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<sup>39</sup> The Florida Senate, *supra* note 28.

<sup>40</sup> DCF, *supra* note 29, at 2.

<sup>41</sup> Office of the State Courts Administrator, *County Criminal Overview, FY 2012-13 Statistical Reference Guide*, <http://www.flcourts.org/core/fileparse.php/250/urlt/reference-guide-1213-county-crim.pdf>

Multiplying the number of misdemeanor filings, 308,467 by the rate of mental illness, 5.4 percent, 16,657 misdemeanor defendants would be served. Multiplying the number of persons to be served by the average cost of services, which is \$4,462, the total cost is estimated at \$74 million.

Estimated fiscal costs are the cost of the pilot program (\$4.5 million) plus the cost of the conditional release for misdemeanor defendants (\$74 million), for a total estimated cost of almost \$79 million from the provisions of this bill.<sup>42</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 Office of State Courts Administrator 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.

However, fiscal impact from this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the impact on judicial and court workload.<sup>43</sup>

The Department of Corrections expects a minimal impact for the Department's 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>44</sup>

## **VI. Technical Deficiencies:**

None.

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<sup>42</sup> DCF, *supra* note 29, at 3-6.

<sup>43</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).

<sup>44</sup> Department of Corrections, *supra* note 5, at 4.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 910.035, 916.106, 916.17, 948.01, 948.06, 948.08, 948.16, and 948.21.

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: 394.658, 916.16, 397.334, and 948.012.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.