

**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 Children, Families, and Elder Affairs

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BILL: CS/SB 960

INTRODUCER: Senator Baxley

SUBJECT: Mental Health and Substance Abuse

DATE: January 10, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	<b>Fav/CS</b>
2.			AHS	
3.			AP	

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 960 requires jails to continue to administer psychiatric medications as prescribed at mental health treatment facilities upon a facility client's return to jail, unless the jail physician determines a change in medication will not adversely affect the defendant's mental health status or ability to continue with court proceedings.

The bill also requires the Department of Children and Families (DCF) to request an individual's medical information from jails when an individual is committed to a DCF forensic facility within certain timeframes.

The bill repeals the requirement for DCF to develop a certification process for community substance abuse prevention coalitions. These changes are a part of DCF's 2018 legislative package.

The bill is anticipated to have no fiscal impact on state government and an indeterminate, insignificant impact on local governments, and has an effective date of July 1, 2018.

**II. Present Situation:**

**Mental Illness and Substance Abuse of Offenders in the Criminal Justice System**

As many as 125,000 adults with a mental illness or substance use disorder requiring immediate treatment are arrested and booked into Florida jails each year.<sup>1</sup> Between 2002 and 2010, the population of inmates with mental illness or substance use disorder in Florida increased from 8,000 to 17,000 inmates.<sup>2</sup> By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000.<sup>3</sup>

### **State Forensic System -- Mental Health Treatment for Criminal Defendants**

Chapter 916, F.S., governs the state forensic system, a network of state facilities and community services for persons with mental health issues involved with the criminal justice system. The forensic system serves defendants deemed incompetent to proceed or not guilty by reason of insanity. A defendant is deemed 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 if the defendant lacks both a rational and factual understanding of the proceedings against him or her.<sup>4</sup>

If a defendant is suspected of being incompetent, the court, defense counsel, or the State may file a motion to have the defendant's cognitive state assessed.<sup>5</sup> If the motion is granted, court-appointed experts will evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.<sup>6</sup> If the defendant is found to be competent, the criminal proceeding resumes.<sup>7</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>8</sup> Competency restoration services teach defendants about the legal process, their charges, potential legal outcomes they might face, and their legal rights so as to prepare them to participate meaningfully in their own defense.<sup>9</sup>

Defendants may be adjudicated not guilty by reason of insanity pursuant to s. 916.15, F.S. DCF must admit a defendant adjudicated not guilty by reason of insanity who is committed to the department<sup>10</sup> to an appropriate facility or program for treatment and must retain and treat the defendant.<sup>11</sup>

Offenders who are charged with a felony and deemed incompetent to proceed and offenders adjudicated not guilty by reason of insanity may be involuntarily committed to state civil<sup>12</sup> and

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<sup>1</sup> The Florida Senate, *Forensic Hospital Diversion Pilot Program, Interim Report 2011-106*, (Oct. 2010), p. 1, available at <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-106cf.pdf> (last visited January 4, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> S. 916.12(1), F.S.

<sup>5</sup> Rule 3.210, Fla.R.Crim.P.

<sup>6</sup> *Id.*

<sup>7</sup> Rule 3.212, Fla.R.Crim.P.

<sup>8</sup> *Id.*

<sup>9</sup> OPPAGA, *Juvenile and Adult Incompetent to Proceed Cases and Costs*, Report No. 13-04, Feb. 2013, p. 1., available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1304rpt.pdf> (last visited January 4, 2018).

<sup>10</sup> The court may also order outpatient treatment at any other appropriate facility or service or discharge the defendant. Rule 3.217, Fla.R.Crim.P.

<sup>11</sup> S. 916.15(3), F.S.

<sup>12</sup> A "civil facility" is a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S.,

forensic<sup>13</sup> treatment facilities by the circuit court,<sup>14, 15</sup> or in lieu of such commitment, may be released on conditional release by the circuit court if the person is not serving a prison sentence.<sup>16</sup>

### **Sharing Medical Information Between County Jails and DCF**

Forensic clients committed to DCF's state mental health treatment facilities are transferred to the facilities directly from the county jails, and often need immediate or continuous medical treatment.<sup>17</sup> Jail physicians must provide a current psychotropic medication<sup>18</sup> order at the time a forensic client is transferred to the state mental health treatment facility or upon request of the admitting physician following an evaluation.<sup>19</sup> However, there is no timeframe within which a jail physician must respond to a request by DCF for such information, nor is there any requirement for jail physicians to provide other medical information about individuals being transferred to DCF. While DCF currently requests medical information from the county jails when a commitment packet is received from the courts, there is no time requirement within which DCF must make the request.<sup>20</sup>

### **Continuation of Psychiatric Medications**

When forensic clients are released from state mental health treatment facilities, most are returned to the county jail to await resolution of their court cases. Some individuals are maintained by county jails on the same psychiatric medication regimen prescribed and administered at the state mental health treatment facility, while others are not. One possible outcome of discontinuing the previous medication regimen is the individual again losing competency, in which case the jail must return him or her to a secure forensic facility due to an inability to stand trial or proceed with resolution of his or her court case.<sup>21</sup>

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who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. S. 916.106(4), F.S.

<sup>13</sup> A "forensic facility" is a separate and secure facility established within DCF or APD to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents. S. 916.106(10), F.S.

<sup>14</sup> "Court" is defined to mean the circuit court. s. 916.106(5), F.S.

<sup>15</sup> SS. 916.13, 916.15, and 916.302, F.S.

<sup>16</sup> S. 916.17(1), F.S.

<sup>17</sup> Department of Children and Families, Agency Bill Analysis for 2018 House Bill 0721, *available at* <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=21751&yr=2018> (last visited January 4, 2018).

<sup>18</sup> Psychotropic medication is a broad term referring to medications that affect mental function, behavior, and experience; these medications include anxiolytic/hypnotic medications, such as benzodiazepines, antidepressant medications, such as selective serotonin reuptake inhibitors (SSRIs), and antipsychotic medications. Pamela L. Lindsey, *Psychotropic Medication Use among Older Adults: What All Nurses Need to Know*, J. GERONTOL NURS., (Sept. 2009), *available at*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3128509/> (last visited January 4, 2018).

<sup>19</sup> S. 916.107(3)(a)2.a., F.S.

<sup>20</sup> *Supra*, note 17.

<sup>21</sup> *Id.*

## Certification of Community Substance Abuse Prevention Coalitions

Section 397.321, F.S., requires DCF to license and regulate all substance abuse providers in the state. It also requires DCF to develop a certification process by rule for community substance abuse prevention coalitions (prevention coalitions), and DCF is currently in the rulemaking process.<sup>22</sup>

Prevention coalitions are local partnerships between multiple sectors of the community that respond to community conditions by developing and implementing comprehensive plans that lead to measurable, population-level reductions in drug use and related problems.<sup>23</sup> They do not provide substance abuse treatment services, and certification is not a requirement for eligibility to receive federal or state substance abuse prevention funding. However, to receive funding from DCF, a coalition must follow a comprehensive process that includes a detailed needs assessment and plan for capacity building, development, implementation, and sustainability to ensure that data-driven, evidence-based practices are employed for addressing substance misuse for state-funded coalitions.<sup>24</sup>

Some prevention coalitions choose to apply for certification from nationally-recognized credentialing entities. Additionally, the Florida Certification Board, a non-profit professional credentialing entity, offers certifications for Certified Prevention Specialists and Certified Prevention Professionals, for those individuals who desire professional credentialing.<sup>25</sup> However, Florida is the only state that requires prevention coalitions to be certified. Only one other state, Ohio, has established a certification program for prevention coalitions, and it is voluntary.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** repeals subsection 16 of s. 397.321, F.S., requiring DCF to develop a certification process by rule for prevention coalitions. As a result, prevention coalitions would no longer be subject to a certification process.

**Section 2** amends s. 916.13 F.S., relating to involuntary commitment of defendants adjudicated incompetent to proceed, to require jails to administer the same psychiatric medications as prescribed by the treating physician upon discharge by the mental health treatment facility, unless the jail physician documents the need to change or discontinue such medications. The bill requires that the jail physician must collaborate with the DCF treating physician to ensure any changes to the medication regimen do not adversely impact the ability of the defendant to proceed with court proceedings. The bill gives final authority for determining which medication to administer to the jail physician, and requires the jail physician to document any modifications made to psychiatric medications at the jail.

The bill also requires jails to send medical information for individuals in their custody that will be admitted to state mental health treatment facilities. DCF will be required to notify the jails

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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

within two days of receipt of a commitment order and other required documents, and the jail will be required to send the medical information within three working days of DCF's notification.

**Section 3** amends s. 916.15, F.S., by applying the same new requirements of the bill, regarding sharing of information between jails and DCF and continuation of psychiatric medications upon return to the jail, to instances involving involuntary commitment of defendants adjudicated not guilty by reason of insanity.

**Section 4** provides an effective date of July 1, 2018.

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

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

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill will require county jails to spend funds to continue psychiatric medications, but because this fiscal impact is likely insignificant an exemption will apply.

##### **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 may have an insignificant fiscal impact on county jails that would be required to cover the cost of a specific psychotropic medication that they would not have previously covered. These costs are indeterminate.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 916.13 and s. 916.15 of the Florida Statutes.  
This bill repeals s. 397.321(16) of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Children, Families, and Elder Affairs on January 9, 2018:**

- Replaces the requirement that DCF notify a jail within two days of receiving a completed commitment packet for a defendant with a requirement that DCF instead notify the jail within two days of receiving a commitment order and other required documents for a defendant.
- Requires a DCF facility physician and a jail physician to collaborate in deciding whether or not to change or stop any psychiatric medications prescribed to a defendant who has regained his or her competency and is being sent back to a jail.
- Requires this collaboration in order to ensure that changing any of the defendant's current medications will not adversely impact his or her mental status or ability to continue with court proceedings.
- Requires the jail physician in such cases to document the need to change or discontinue any psychiatric medication provided at the forensic facility.
- Requires that final authority for any change in psychiatric medication in such cases be given to the jail physician.
- Imposes all of these same requirements in cases involving defendants adjudicated not guilty by reason of insanity who are sent back to a jail.

- B. **Amendments:**