HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1081 Substance Abuse and Mental Health
SPONSOR(S): Health & Human Services Committee, Children, Families & Seniors Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	Morris	Brazzell
2) Health Care Appropriations Subcommittee	9 Y, 0 N	Fontaine	Clark
3) Health & Human Services Committee	16 Y, 0 N, As CS	Morris	Calamas

SUMMARY ANALYSIS

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves). CS/HB 1081 makes a variety of changes to laws relating to substance abuse and mental health services.

The bill redefines "mental illness" related to the Baker Act and post-adjudication commitment to exclude dementia and traumatic brain injury.

The bill allows licensed health care professionals and facilities to contract with DCF and managing entities to provide mental health services without a separate license from DCF.

The bill broadens the duties of the Statewide Office of Suicide Prevention (Office) within DCF by requiring the Office to coordinate education and training curricula on suicide prevention efforts for veterans and service members. Additionally, the bill requires the Office to include veterans and service members in the network of community-based programs intended to improve suicide prevention initiatives.

The bill broadens the scope of the Suicide Prevention Coordinating Council (Council) by requiring the Council to make recommendations on the implementation of evidence-based mental health programs and suicide risk identification training in the Council's annual report on suicide prevention. The Council is also required to work with DCF to help make the public more aware of the locations and availability of behavioral health providers.

The bill requires county jails to administer the psychotropic medications prescribed by DCF when a forensic client is discharged and return to the county jail, unless the jail physician documents the need to change or discontinue such medication. The DCF treating physician must consult with the jail physician and consider prescribing medication included in the jail's drug formulary. Additionally, the bill requires county jails to send all medical information for individuals in their custody who will be admitted to state mental health treatment facilities. DCF must request this information immediately upon receipt of a completed commitment packet. Upon receipt of such a request, the county jail must provide the requested information within three business days.

The bill has an insignificant, negative fiscal impact on DCF. The bill has an indeterminate, insignificant, negative impact local governments.

The bill provides an effective date of July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Illness and Substance Abuse

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Nearly one in five adults live with a mental illness.[4] An estimated 49.5% of adolescents aged 13-18 have a mental disorder.[5] Suicide is the tenth overall leading cause of death in the nation and the second leading cause of death among individuals between the ages of 10 and 24.[6] In 2018, 3,552 lives were lost to suicide in Florida.[7]

Substance abuse also affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[8] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[9] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[10] Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[11]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and

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[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited Jan. 21, 2020).
[2] Centers for Disease Control and Prevention, *Learn About Mental Health*, http://www.cdc.gov/mentalhealth/basics.htm (last visited Jan. 21, 2020).
[3] Id.
[4] National Institute on Mental Health, *Mental Illness,* https://www.nimh.nih.gov/health/statistics/mental-illness.shtml, (last visited Feb. 13, 2020).
[5] National Institute on Mental Health, *Mental Illness – Prevalence of Any Mental Disorder Among Adolescents,* https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#part_155771 (last visited Feb. 13, 2020).
[6] National Institute on Mental Health, *Suicide,* https://www.nimh.nih.gov/health/statistics/suicide.shtml (last visited Feb. 13, 2020).
[7] Department of Children and Families, *Suicide Prevention Coordinating Council 2019 Annual Report,* (Jan. 16, 2020) https://www.myflfamilies.com/service-programs/samh/publications/docs/2019%20Annual%20Report%20Suicide%20Prevention%20Coordinating%20Council%20FINAL.pdf (last visited Feb. 18, 2020).
[8] *World Health Organization, Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Feb. 13, 2020).
[9] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited Feb. 13, 2020).
[10] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited Feb. 13, 2020).
[11] Id.

pharmacological criteria.[12] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[13]

Mental illness and substance abuse commonly co-occur. Approximately 9.2 million adults have co-occurring disorders.[14] In fact, more than half of all adults with severe mental illness are further impaired by substance use disorders (abuse or dependence related to alcohol or other drugs).[15] Drug abuse can cause individuals to experience one or more symptoms of another mental illness.[16] Additionally, individuals with mental illness may abuse drugs as a form of self-medication.[17] Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.[18]

Mental Illness and Substance Abuse Treatment in Florida

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws. [19] The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[20]

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[21]

DCF contracts for behavioral health services through regional systems of care called managing entities (MEs). The 7 managing entities, in turn, contract with and oversee local service providers for the delivery of mental health and substance abuse services throughout the state.[22] Treatment for substance abuse through this community-based provider system includes detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence.[23]

- **Detoxification Services:** Medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[24]
- **Treatment Services:** Assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their

[12] *Supra,* note 9.
[13] Id.
[14] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the U.S.: Results from the 2018 National Survey on Drug Use and Health,* (August 2019), https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last visited Feb. 13, 2020).
[15] Psychology Today, *Co-Occurring Disorders*, https://www.psychologytoday.com/conditions/co-occurring-disorders (last visited Jan. 21, 2020).
[16] *Comorbidity: Addiction and Other Mental Illnesses*, National Institute on Drug Abuse, NIH Publication Number 10-5771, September 2010. https://www.drugabuse.gov/sites/default/files/rrcomorbidity.pdf (last visited Jan. 21, 2020).
[17] Id.
[18] Id.
[19] Sections 394.451-394.47892, F.S.
[20] Section 394.459, F.S.
[21] These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.
[22] Department of Children and Families, *Managing Entities*, http://www.dcf.state.fl.us/service-programs/samh/managing-entities/index.shtml (last visited on Feb. 13, 2020).
[23] Department of Children and Families, *Treatment for Substance Abuse*, https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml, (last visited Feb. 13, 2020).
[24] Id.

own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.[25]

- **Recovery Support:** Transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[26]

Licensure Requirements for Substance Abuse Service Providers

DCF regulates substance abuse treatment by licensing individual treatment components under statute and rule.[27] All private and publicly-funded entities providing substance abuse services must be licensed for each service component they provide.[28] However, current law exempts certain entities from licensure:[29]

- A hospital or hospital-based component;
- A nursing home facility;
- A substance abuse education program established under the public school system;
- A facility or institution operated by the Federal Government;
- An allopathic or osteopathic physician or physician assistant;
- A psychologist;
- A social worker;
- A marriage and family therapist;
- A mental health counselor;
- A church or nonprofit religious organization or denomination that provides services which are solely religious, spiritual, or ecclesiastical in nature;
- A facility licensed by the Agency for Persons with Disabilities;
- DUI education and screening services under the Florida Uniform Traffic Control Law; and
- A crisis stabilization unit.

This exemption from licensure does not apply if the entity provides state-funded services through the DCF managing entity system or provides services under a government-operated substance abuse program.[30]

Licensed service components include a continuum of substance abuse prevention,[31] intervention,[32] and clinical treatment services.[33] Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[34] "Clinical treatment services" include, but are not limited to, the following licensable service components:[35]

[25] Id. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[26] Id.
[27] Ch. 397, F.S. and R. 65D-30, F.A.C.
[28] S. 397.403, F.S.
[29] S. 397.4012, F.S.
[30] S. 397.4012, F.S.
[31] S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. *See also,* Department of Children and Families, *Substance Abuse: Prevention,* https://www.myflfamilies.com/service-programs/samh/prevention/ (last visited Jan. 21, 2020). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.
[32] S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
[33] S. 397.311(25), F.S.
[34] Id.
[35] S. 397.311(25)(a), F.S.

- Addictions receiving facility;
- Day or night treatment;
- Day or night treatment with community housing;
- Detoxification;
- Intensive inpatient treatment;
- Intensive outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Outpatient treatment; and
- Residential treatment.

Dementia and Traumatic Brain Injury

Dementia is the loss of cognitive function – thinking, remembering, and reasoning – and behavioral abilities to such an extent that it interferes with a person's daily life and activities.[36] These functions include memory, language skills, visual perception, problem solving, self-management, and the ability to focus and pay attention.[37] Some people with dementia cannot control their emotions, and their personalities may change.[38]

Traumatic brain injury (TBI) is a disruption in the normal function of the brain that can be caused by a bump, blow, or jolt to the head, or penetrating head injury.[39] TBI can range from mild to severe. Mild TBI symptoms include difficulty thinking clearly, feeling slowed down, headaches, and irritability.[40] Severe symptoms include nausea and vomiting, slurred speech, loss of coordination, and increased confusion.[41]

Neither the Baker Act[42] nor post-adjudication commitment[43] exclude dementia or TBI as a reason for subjecting an individual to involuntary treatment. The definitions in those statutes expressly exclude a developmental disability, autism, intoxication, and conditions manifested only by antisocial behavior or substance abuse, but not dementia or TBI. This means that individuals with dementia or TBI who do not have a co-occurring mental illness can be subject to involuntary treatment under the Baker Act, disrupting them from their normal environment and possibly exacerbating their condition. This also means that defendants with dementia or TBI who lack a co-occurring mental illness can be committed to forensic facilities, even though a state mental health treatment facility is not an appropriate setting for such a population.

In 2013, the Statewide Purple Ribbon Task Force[44] recommended excluding dementia and TBI from the definition of mental illness because neither are mental illnesses.[45] This recommendation was made to keep such individuals from experiencing negative, life-impacting changes associated with being removed suddenly from a stable environment.[46]

Statewide Office of Suicide Prevention

The Statewide Office of Suicide Prevention (Office) is housed within the Department of Children and Families and tasked with coordinating education and training in suicide prevention efforts for law enforcement personnel, first responders, health care providers, school employees, and others who may have contact with persons at risk of suicide.[47] As required by law, the Office has developed a network

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[36] National Institute on Aging, *What is Dementia? Symptoms, Types, and Diagnosis,* https://www.nia.nih.gov/health/what-dementia-symptoms-types-and-diagnosis (last visited Feb. 18, 2020)
[37] Id.
[38] Id.
[39] Centers for Disease Control and Prevention, *Traumatic Brain Injury & Concussion,* https://www.cdc.gov/traumaticbraininjury/index.html (last visited Feb. 28, 2020).
[40] Id.
[41] Id.
[42] S. 394.455(28), F.S.
[43] S. 916.106(14), F.S.
[44] Chapter 2012-72, Laws of Florida, created the Purple Ribbon Task Force which conducted an interim study regarding Alzheimer's disease and dementia in the state and made findings and recommendations for a state response to Alzheimer's disease.
[45] Id.
[46] Id.
[47] S. 14.2019, F.S.

of community-based programs, which works to identify and eliminate barriers to providing suicide prevention services to at risk individuals.[48]

The Office collaborates with the Suicide Prevention Coordinating Council (Council) to prepare the statewide suicide prevention plan and the annual Council report.[49] The Council's annual report addresses Florida's suicide prevention efforts and goals, and provides an overview of national and state suicide statistics.[50] The Council is comprised of 27 voting members and one nonvoting member, representing law enforcement, mental health practitioners, suicide prevention experts, schools, family members, and state agencies.[51] The Office and the Council also focus on providing resources and ways to seek help, suicide prevention initiatives, and increasing public awareness.[52]

State Forensic System – Mental Health Treatment for Criminal Defendants

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.[53] The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[54] Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.[55]

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[56] If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[57] If the defendant is found to be competent, the criminal proceeding resumes.[58] If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.[59]

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed[60] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil[61] and forensic[62] treatment facilities by the circuit

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[48] Id.
[49] *Supra,* note 7.
[50] Id.
[51] Id.
[52] Department of Children and Families, *Suicide Prevention,* https://www.myflfamilies.com/service-programs/samh/prevention/suicide-prevention/ (last visited Feb. 18, 2020).
[53] *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).
[54] Id. See also Rule 3.210(a)(1), Fla.R.Crim.P.
[55] Id. See also s. 916.12, 916.3012, and 985.19, F.S.
[56] Rule 3.210, Fla.R.Crim.P.
[57] Id.
[58] Rule 3.212, Fla.R.Crim.P.
[59] Id.
[60] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." s. 916.12(1), F.S.
[61] 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., 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. Section 916.106(4), F.S. DCF oversees two state-operated forensic 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.
[62] 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. Section 916.106(10), F.S.

court,[63] or in lieu of such commitment, may be released on conditional release[64] by the circuit court if the person is not serving a prison sentence.[65] Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[66]

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.[67]

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. DCF oversees two state-operated forensic facilities, Florida State Hospital[68] and North Florida Evaluation and Treatment Center,[69] and two privately-operated, maximum security forensic treatment facilities.[70] The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.[71] In addition to general psychiatric treatment approaches and environment, specialized services include:

- Psychosocial rehabilitation;
- Education;
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention;
- Sexually transmitted disease education and prevention;
- Substance abuse awareness and prevention;
- Vocational training;
- Occupational therapies; and
- Full range of medical and dental services.[72]

In Fiscal Year 2014-2015, there were 1,573 forensic commitments.[73] This number was 1,587 and 1,680 in Fiscal Years 2015-2016 and 2016-2017, respectively.[74] The increasing number of forensic commitments has made it difficult for DCF to admit individuals to state forensic facilities within the statutorily mandated 15 days.[75] Between July 1, 2016 and June 30, 2017, it took an average of 10 days to admit forensic individuals into state mental health treatment facilities.[76]

Medical Information Sharing Between County Jails and DCF

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[63] Sections 916.13, 916.15, and 916.302, F.S.
[64] Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[65] Section 916.17(1), F.S.
[66] Section 916.16(1), F.S.
[67] Section 916.13(2), F.S.; section 916.15(3), F.S.
[68] Florida State Hospital has capacity for 959 individuals, of which 469 may receive forensic services. Up to an additional 245 individuals with forensic commitments (but do not require the security of a forensic setting) may occupy the hospital's civil beds. *See* Department of Children and Families, *Forensic Facilities*, https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml (last visited Feb. 13, 2020).
[69] Id. The North Florida Evaluation and Treatment Center has 193 beds.
[70] Id. South Florida Evaluation and Treatment Center has a capacity to serve 238 individuals, and Treasure Coast Treatment Center has a contracted capacity of 208 beds.
[71] Florida Department of Children and Families, *About Adult Forensic Mental Health (AFMH)*, https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml (last visited Feb. 13, 2020).
[72] Id.
[73] Department of Children and Families, *Exhibit D-3A, Expenditures by Issue and Appropriation Category, Budget Period 2019-2020*, p. 351.
[74] Id.
[75] Id. *See also* s. 916.107(1)(a), F.S.
[76] Id.

Forensic clients committed to DCF's state mental health treatment facilities are transferred to the facilities directly from the county jails, and some may have medical conditions that require on-going or immediate medical treatment.[77] Current law requires jail physicians to provide a current psychotropic medication[78] order at the time a forensic client is transferred to the state mental health treatment facility or upon request of the admitting physician after the client is evaluated.[79] However, there is no statutory 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 statutory time requirement within which DCF must make the request. According to DCF, lack of continuity of care and lack of information on the individual's medical status can result in life-threatening situations.[80]

Continuation of Psychotropic Medications

When forensic clients are restored to competency and released from state mental health treatment facilities, most are returned to the county jail of the committing jurisdiction 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 individuals are not.

Continuation of a forensic client's psychotropic medication treatment upon transfer from a state mental health treatment facility to a county jail may prevent negative health outcomes, including loss of competency.[81] If an individual loses competency, then the jail must return him or her to a secure forensic facility, as he or she once again becomes unable to stand trial or proceed with resolution of his or her court case.[82]

DCF defines a recidivist as an individual who is recommended as competent to the court, returned to the jail from the forensic facility, and then readmitted to the forensic facility as incompetent to proceed on the same charge for which he or she was originally found competent.[83] Over the last three years, an average of 12% of those deemed competent to proceed were readmitted to the forensic facility.[84] DCF does not collect information on the reason for the recidivism, so DCF cannot identify how often such recidivism is caused by the jail's failure to maintain the forensic client's psychotropic medication as determined by the state mental health treatment facility.

Effect of the Bill

Licensure Requirements for Substance Abuse Service Providers

The bill allows the following entities to contract with DCF and MEs without needing DCF licensure:

- A hospital or hospital-based component;
- A nursing home facility;
- An allopathic or osteopathic physician or physician assistant;
- A psychologist;

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[77] Department of Children and Families, Agency Bill Analysis for 2020 House Bill 1081, (Jan. 14, 2020) (On file with Children, Families, and Seniors Subcommittee Staff).
[78] 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), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3128509/ (last visited Jan. 21, 2020).
[79] S. 916.107(3)(a)2.a., F.S.
[80] *Supra,* note 77.
[81] Id.
[82] Id.
[83] Email from Lindsey Zander, Deputy Director of Legislative Affairs, Department of Children and Families, RE: Recidivist Data, (Dec. 17, 2017) (on file with Children, Families, and Seniors Subcommittee staff).
[84] Email from John Paul Fiore, Legislative Specialist, Department of Children and Families, RE: HB 1071 and 1081 Information, (Jan. 21, 2020) (on file with Children, Families, and Seniors Subcommittee staff).

- A social worker;
- A marriage and family therapist;
- A mental health counselor; and
- A crisis stabilization unit.

This will expand the number of organizations with which DCF and MEs could contract to improve access to services for individuals with substance use disorders. Maintaining the exemption for these organizations will also remove the impediment to organizations of needing to be licensed by two different agencies.

The bill also exempts an inmate substance abuse program under the Department of Corrections from the accreditation requirements for licensure under the substance abuse chapter. While still subject to licensure, these programs are exempt from certain licensure requirements, such as background screening requirements for substance abuse provider personnel.[85]

Defining Mental Illness

The bill redefines "mental illness" related to the Baker Act and post-adjudication commitment to exclude dementia and traumatic brain injury. This proposed change will prohibit individuals with dementia or TBI who lack a co-occurring mental illness form being inappropriately admitted for involuntary examination at Baker Act receiving facilities, or being involuntary admitted to a state mental health treatment facility. However, the proposed change will not prohibit an individual who has dementia or TBI with a co-occurring mental illness who is experiencing a mental health crisis from being admitted to a Baker Act receiving facility or a state mental health treatment facility for involuntary examination.

Statewide Office of Suicide Prevention

The bill creates new duties of the Office by requiring the Office to include veterans and service members when coordinating education and training in suicide prevention efforts, as current resources permit. Veterans and service members are also required to be included in the network of community-based programs, which works to identify and eliminate barriers to providing suicide prevention services to at risk individuals. It also requires the Office to act as a clearinghouse for information and resources on suicide prevention by sharing evidence-based practices and collecting and analyzing data on trends in suicide. Under the bill, the Office is required to advise the Department of Transportation on the design of infrastructure projects in the state in order to implement design elements and features that act as suicide deterrents.
Additionally, the bill revises the membership of the Council by adding five new members and removing one defunct member. The bill broadens the scope of the Council by requiring the Council to make recommendations on suicide prevention, including the implementation of evidence-based mental health programs and suicide risk identification training in their annual report. The bill also requires the Council to work with DCF to help make the public more aware of the locations and availability of behavioral health providers. This will increase public awareness of resources available to assist those who need it to help to prevent suicides.

Medical Information Sharing Between County Jails and DCF

The bill also requires county jails to send all medical information for individuals in their custody who will be admitted to state mental health treatment facilities. The bill requires DCF to request this information immediately upon receipt of a completed commitment packet which is provided by the court. Upon receipt of such a request, the county jail must provide the requested information within 3 business days or at the time the defendant enters the physical custody of DCF, whichever is earlier. This proposed change will provide staff at the state mental health treatment facility the required information to provide continued or necessary medical care and treatment.

Continuation of Psychotropic Medication Treatment

[85] Ss. 397.4073(a)1 and (e), F.S.

The bill requires the treating physician to consult with the jail physician on the jail's drug formulary and consider prescribing the same psychotropic medications included in the jail's drug formulary. The bill requires county jails to administer the same psychotropic medications to a defendant as prescribed by the treating physician upon discharge by a mental health treatment facility, unless the jail physician determines there is a compelling medical reason to change or discontinue the medication for the health and safety of the defendant. If the jail physician changes or discontinues the medication and the defendant is later determined to be incompetent to stand trial and is recommitted to DCF, the bill requires the jail physician to refrain from changing or discontinuing the defendant's prescribed psychotropic medication upon the next discharge from a treatment facility. This proposed change is in an effort to stop the cycle of defendants decompensating and having to return to a forensic facility for treatment.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.455, F.S., relating to definitions.
Section 2: Amends s. 394.9085, F.S., relating to behavioral provider liability.
Section 3: Amends s. 397.311, F.S., relating to definitions.
Section 4: Amends s. 397.4012, F.S., relating to exemptions from licensure.
Section 5: Amends s. 916.106, F.S., relating to definitions.
Section 6: Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.
Section 7: Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.
Section 8: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill increases the duties of the Statewide Office of Suicide Prevention, but current law requires the Office to use available resources to carry out assigned duties, so the impact is insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate, but likely insignificant, negative fiscal impact on county jails that are required to administer specific psychotropic medications that would not have otherwise been administered. The number of instances in which this occurs is unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an increase of available behavioral health service providers, as the bill permits certain existing licensures to obtain DCF licensure. An increase of providers will expand the costs upon a fixed, available revenue for these services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may require county jails to spend funds to continue psychotropic medications under limited conditions; however, an exemption applies because the bill amends criminal procedures and may have an insignificant fiscal impact.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Current law contains sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2020, the Health and Human Services Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Broaden the scope and duties of the Statewide Office of Suicide Prevention (Office) in DCF;
- Require the Office to coordinate education and training curricula on suicide prevention efforts for veterans and service members;
- Include veterans and service members in the network of community-based programs intended to improve suicide prevention initiatives;
- Broaden the scope and duties of the Suicide Prevention Coordinating Council and adds five new members; and
- Restore language regarding the day-or-night treatment licensed service component back to current law.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.