



The Florida Senate

Interim Report 2012-108

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Budget Subcommittee on Health and Human Services Appropriations

THE FORENSIC MENTAL HEALTH SYSTEM

Issue Description

Florida's forensic mental health system is a network of state facilities and community services for adults over the age of 18 and juveniles adjudicated as adults who have a mental illness and who are involved with the criminal justice system. These forensic services include evaluations for competency to proceed with a criminal trial, treatment following a finding of not guilty by reason of insanity, and services to individuals on conditional release in the community.¹

It is in the state's interest to seek the most effective and efficient means to treat individuals requiring competency restoration services. Competency restoration is needed for individuals who are incompetent to stand trial or for individuals who are found not guilty by reason of insanity under ch. 916, Florida Statutes. In 2007, the Florida Supreme Court Task Force on the forensic treatment system recommended the development of safe and cost efficient community-based treatment alternatives to state mental health treatment facilities.² More recently, the Department of Children and Families (the "Department") issued a report from the *Mental Health Facilities Review Work Group* in 2010, which recommended:

- Expanding community-based competency restoration services through more effective and less expensive forensic hospital diversion programs, and
- Transferring appropriate hospital residents currently in forensic step-down beds to less expensive community settings.³

The Work Group report coincided with the release of a Senate interim report (2011-106) on the forensic hospital diversion pilot program operating in Miami-Dade County.⁴ The report recommended expanding the pilot program to two additional areas of the state. During the 2011 Legislative Session, the Senate Committee on Children, Families, and Elder Affairs introduced SB 2064, to provide community treatment rather than hospital treatment for individuals with forensic involvement. The bill would have expanded the Miami-Dade pilot and made other changes in the state's forensic system. While this bill passed the Senate, it died in House Messages.

The 2011 Legislature reduced funding for state-operated forensic treatment facilities by \$14.5 million in general revenue, or seven percent. This reduction resulted in the elimination of 82 surplus forensic beds.

For this interim project, the Budget Subcommittee on Health and Human Services Appropriation reviewed four issues related to the state's forensic mental health system:

- The feasibility and potential cost savings by diverting additional forensic clients from hospital placements to community-based competency restoration programs;
- The feasibility and potential cost savings of transferring clients currently in forensic step-down beds to community placements; and
- The extent to which competency restoration clients cycle between state forensic treatment facilities and county jails and detention centers.

¹ Chapter 916, F.S.

² *Mental Health: Transforming Florida's Mental Health System*, Supreme Court of the State of Florida, Steering Committee on Families and Children in the Court, November 2007.

³ *Report of the State Mental Health Treatment Facilities Work Group*, Department of Children and Families, October 2010.

⁴ Miami-Dade Forensic Alternative Center (MD-FAC).

Background

Forensic services for persons who are charged with a felony, are mentally ill, and have been found to be incompetent to proceed with their trial due to their mental illness, or who have been acquitted of a felony by reason of insanity are governed by ss. 916.111-916.17, Florida Statutes. These individuals are committed to the Department for treatment and remain under the jurisdiction of the committing court (s. 916.16, F.S.). The statute provides for forensic treatment in three settings:

1. Separate and secure forensic facilities;
2. Civil facilities; and
3. Community residential programs or other community settings.

The Department has two state-operated and two privately-operated, maximum-security forensic treatment facilities: Florida State Hospital (state operated), North Florida Evaluation and Treatment Center (state operated), South Florida Evaluation the Treatment Center (privately operated), and Treasure Coast Treatment Center (privately operated). The Department may transfer individuals who no longer require a secure setting into non-secure forensic step-down beds in one of three civil mental health treatment facilities (Florida State Hospital, Northeast Florida State Hospital, and South Florida State Hospital).⁵ The appropriation for state forensic facilities in Fiscal Year 2011-12 is \$139 million from the General Revenue Fund.

The Department's Mental Health Treatment Facilities Unit, located in its central office, assigns committed individuals to forensic treatment facilities. While the Department has the discretion to move individuals from forensic to civil facilities without the approval of the committing court, individuals may not be released into the community without a court order.⁶

Community mental health providers, funded by the Department, provide mental health treatment services to forensic clients who do not require or meet the criteria for placement in the state's forensic facilities. These providers offer the first level of treatment and assessment aimed at stabilizing the client and reducing the need for admission into a state facility. Services may include treatment and competency restoration services in jail or community settings for individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Community mental health services are provided to individuals while in county jail awaiting state facility admission and to individuals released from state mental health treatment facilities. These services include the monitoring of individuals on conditional release and individuals receiving residential or outpatient services.⁷

Findings and/or Conclusions

State Forensic Facility Bed Capacity and Cost

There are 1,098 beds in the state's secure forensic facilities and 420 non-secure forensic step-down beds in the state's civil mental health treatment facilities. As of August 24, 2011, there were 1,012 individuals in secure beds and 417 in non-secure step-down beds. The statewide utilization rate for secure beds on that date was 92 percent, and ranged from 67 percent for the North Florida Evaluation and the Treatment Center to 98 percent for Treasure Coast Forensic Treatment Center.⁸

The average cost for a secure forensic bed is \$333 per day. The lowest cost is for the South Florida Evaluation and Treatment Center (\$298) and the highest cost is for the Florida State Hospital (\$358).^{9,10}

⁵ s. 916.105(3), F.S.

⁶ s. 916.16(1), F.S.

⁷ Interview with Sally Cunningham, Chief, Department of Children and Families, Mental Health Facilities, June 17, 2011.

⁸ Data provided by the Department of Children and Families Mental Health Program Office August 2011.

⁹ When the cost of payment on the construction bond for South Florida Evaluation and Treatment Center is included, the cost per bed is \$338.

¹⁰ Department of Children and Families, Mental Health Program Office, August 21, 2011.

Recidivism for Competency Restoration Clients

For Fiscal Year 2010-2011, the Department reported that 7.8 percent of individuals restored to competency in state mental health treatment facilities and returned to jail to await trial were thereafter returned to a treatment facility prior to trial. Individuals return to state facilities because they have deteriorated emotionally and psychologically while incarcerated. Reasons for this include delays in the trial date, differences in the drug formulary between the state treatment facility and the jail, the mental fragility of the individual, and disagreements between the court-ordered competency evaluation and the forensic hospital's evaluation.¹¹

Community-Based Forensic Residential Program Models

To address a shortage of secure forensic beds in state facilities for adults committed to the Department by the court system, the Legislature appropriated \$53.1 million in Fiscal Year 2007-2008. Of these funds, \$41.6 million was to provide 343 additional beds in the state facilities and \$11.5 million was to increase secure and non-secure bed capacity by 70 beds in four community forensic programs. These community forensic programs are still in operation and are located in Tallahassee, Jacksonville, Miami, and Pembroke Pines. The beds are available to individuals statewide and managed by the Department's regional offices.¹²

Community forensic programs provide residential care and mental health services to individuals found incompetent to proceed and to individuals found not guilty by reason of insanity. All individuals served in these programs have a conditional release order issued by the court in lieu of a commitment to a state facility. These programs vary in design from an open campus with minimal supervision to programs that are physically and staff secure. The per diem costs of the programs range from \$85 for an assisted living facility with mental health overlay services, to \$291 for secure beds with an array of mental health and other services. The Department reports that these programs are successful in keeping individuals from entering or re-entering state facilities, as well as reintegrating individuals into the community in less restrictive placements when combined with intensive outpatient services.¹³

The Miami-Dade Forensic Alternative Center (MD-FAC) offers another model for community forensic programs. Started in August 2009, the Miami-Dade program is a collaborative effort between the Department and Eleventh Judicial Circuit. The MD-FAC program is a 10-bed facility serving non-violent second and third degree felons found by the court to be incompetent to proceed. Unlike the other programs, MD-FAC is the only community-based forensic commitment program. In addition to competency restoration services, the program offers a continuum of care during the commitment period and after re-entry into the community. Program staff continue to monitor individuals to ensure that treatment and support services are maintained. An advantage of this model of competency restoration is that, unlike state facilities, the program is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. As a result, individuals are less likely to decompensate, or lose their ability to maintain normal psychological functioning, and be declared incompetent to proceed again. Outcomes for the Miami-Dade program indicate that competency is restored more quickly (103 days) than state facilities (146 days). The Miami-Dade program also cost less per bed day (\$229) than state facilities (\$333).¹⁴

Community-Based Forensic Programs

As of June 2011, the Department reported that there were 2,210 individuals receiving treatment and support services in the community through mental health providers. Of these individuals, 69% were in forensic treatment because they were found incompetent to proceed, as opposed to being found not guilty by reason of insanity. Most of the individuals served in community based programs were charged with second or third degree felonies. These individuals are on conditional release status and are either in pre-conviction diversion programs for competency restoration services or post-commitment programs after release from a state facility. While most of

¹¹ Interview with Sally Cunningham, Chief, Department of Children and Families Mental Health Treatment Facilities, June 17, 2011.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Miami-Dade Forensic Alternative Center Pilot Program Status Report*, August 2011.

these individuals are served in residential programs, others live in the community and receive intensive outpatient services.¹⁵

Considerations for Establishing Community Forensic Programs

Staff interviewed officials with the Department, community mental health providers, local law enforcement, and circuit court judges to identify criteria needed for establishing and maintaining successful community forensic programs.^{16,17} The criteria identified include:

- A level of acceptance by the community with treating felons in the community;
- The support of the local judicial system for community services rather than services in state facilities;
- A focus on public safety concerns that ensures that only second and third degree felons who have no history of violent or aggressive behavior, pose no escape risk, and are amenable for treatment, are targeted for community services;
- An array of community services be provided that include residential programs with different levels of security, supported and independent living arrangements for individuals not requiring residential care, intensive outpatient services, and specialized residential and outpatient services for individuals with co-occurring disorders;
- Provider staff knowledgeable about public benefits who can assist individuals establish or re-establish these benefits as they move into community settings; and
- Provider staff to serve as liaisons with the court with knowledge about the judicial system and its requirements.

Options and/or Recommendations

Close 30 Civil Beds

The Department estimates that there are approximately 40 individuals residing in non-secure, forensic step-down beds in civil facilities who have been found not guilty by reason of insanity but who no longer pose a public safety risk¹⁸. Moving these individuals into the appropriate community settings, with the approval of the court, would reduce the civil facility budget by \$3.3 million annually (based upon an average civil bed cost per day of \$303 x 365 days x 30 people). However, \$2 million of these savings would need to be redirected to communities for forensic services (based upon an average cost of the four model programs of \$184 x 365 days x 30 people). These actions would produce cost savings of \$1.3 million.

Close 30 Forensic Beds

As of August 2011, the Department reported 80 vacant forensic beds. Closing 30 of these beds in state operated facilities could reduce the forensic facility costs by as much as \$3.7 million annually (based upon the average cost per day for state facilities of \$336 x 365 days x 30 beds). These funds could be redirected to expand the community competency restoration programs. Such actions were recommended in Senate Interim Report 2011-106 and SB 2064 from the 2011 legislative session. The projected cost to expand the community competency restoration programs is \$1.7 million. This could result in savings of \$2 million to the state.

Review the Use of North Florida Evaluation and Treatment Facility

The legislature could direct the Department to review the use of the North Florida Evaluation and Treatment Facility to ensure individuals are receiving forensic services in the least costly setting. This facility, located in Gainesville, is the smallest facility in the state system with 193 beds, is 35 years old, and is more costly to operate than other more modern facilities. The Department closed 23 beds in this facility in July 1, 2011. As of August

¹⁵ Interview with Sally Cunningham, Chief, Department of Children and Families Mental Health Treatment Facilities (June 17, 2011).

¹⁶ Interviews with Stephanie Colston, Director of Substance Abuse and Mental Health, Department of Children and Families, Bob Sharpe, President, Florida Council for Community Mental Health, Inc., John Petrila, Director of the Florida Mental Health Institute's Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center, Linda McKinnon, CEO of Central Florida Behavioral Health Network, Inc., Joe Rutherford, Mental Health Care Inc., of Tampa, Michael Allen, Polk County Sheriff's Office, Valerie Westhead, Seminole County Sheriff's Office, Marilyn Ford, Volusia County Sheriff's Office, Judges Leifman, 11th circuit, Speiser, 17th circuit, Sjostram, 2nd circuit, Nilon, 8th circuit, and Marx, 15th Circuit, (June 17-August 12, 2011).

¹⁷ Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (August 1, 2011).

¹⁸ Interview with Sally Cunningham, Chief, Department of Children and Families Mental Health Facilities (June 17, 2011).

2011, the facility had a relatively low utilization rate of 67 percent. Once the Department reviews the use of this facility, it may be possible to move these individuals to other less costly facilities and programs, allowing the closure of the North Florida Evaluation and Treatment Facility.