

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 293 Certain Defendants with Mental Illness

**SPONSOR(S):** Judiciary Committee

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Frost	Luczynski

### SUMMARY ANALYSIS

The Florida Mental Health Act (also known as “The Baker Act”) addresses the mental health needs of individuals in the state. The Baker Act authorizes voluntary and involuntary examinations of individuals suspected of having a mental illness who present a threat of harm to themselves or others. An individual may be held for an involuntary examination for up to 72 hours. Courts, law enforcement officers, and certain health care practitioners are authorized to initiate involuntary examinations.

Law enforcement is often called to intervene in situations involving mentally ill persons. These situations are often challenging, as individuals with mental illness may not respond well to standard law enforcement approaches. Research indicates that alternative approaches, such as crisis intervention training, are effective tools in approaching individuals with mental illness, resulting in lower rates of injury and death, decreased likelihood of arrest, and increased likelihood of referral or transport to mental health services.

PCS for HB 293 establishes, subject to available funding, the Law Enforcement Behavioral Health Intervention Unit Pilot Program (BHI Pilot Program) and the Misdemeanor Mental Health Diversion Pilot Program (MHD Pilot Program) for a period of three years in Flagler, Putnam, St. Johns, and Volusia counties. The bill encourages the pilot counties to apply for criminal justice grants to support the programs. The bill directs the Sheriff’s Office in each county to establish a Behavioral Health Intervention Unit (BHI Unit) and each county to establish the MHD Pilot Program by October 1, 2020.

The bill requires BHI Unit deputies to complete specialized training and receive assistance and support from specified mental health professionals to more effectively engage individuals with mental health, substance abuse, or co-occurring mental health and substance abuse disorders.

The bill provides a process each MHD Pilot Program must follow when a defendant charged with a misdemeanor or ordinance violation is booked into a jail, including:

- Completing an initial mental health evaluation within 24 hours of booking;
- Creating a separate mental health docket for defendants with mental health disorders;
- Creating a process for involuntary and voluntary transfer from a jail to a Baker Act facility;
- Continuing mental health treatment for defendants who remain in jail or who are released;
- Requiring an BHI Unit to maintain specified contacts with a defendant with a mental health disorder who is released from jail; and
- Dismissing a defendant’s charges upon successfully completing treatment or continuing prosecution upon his or her failure to complete treatment.

The bill requires annual reporting of specific data during each year the BHI and MHD Pilot Programs operate.

The bill also exempts fiscally constrained counties from providing local matching funds when awarded criminal justice grants to establish either of the pilot programs.

The bill will likely have a fiscal impact on Baker Act receiving facilities, courts, local law enforcement, and county jails.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Mental Illness

Mental illness affects millions of people in the United States each year. Only about 17 percent of adults in the United States are considered to be in a state of optimal mental health.<sup>1</sup> This leaves the majority of the population with less than optimal mental health.<sup>2</sup>

- One in five adults (43.8 million people) experiences mental illness in a given year;
- Approximately 6.9 percent (16 million people) had at least one major depressive episode in the past year; and
- Approximately 18.1 percent live with anxiety disorders, such as obsessive-compulsive disorder, posttraumatic stress disorder, and specific phobias.

Many people are diagnosed with more than one mental illness. For example, people who suffer from a depressive illness (major depression, bipolar disorder, or dysthymia) tend to co-occur with substance abuse and anxiety disorders.<sup>3</sup>

Mental illness creates substantial social and economic costs.<sup>4</sup> Unemployment rates for persons having mental disorders are high relative to the overall population.<sup>5</sup> Rates of unemployment for people having a severe mental illness range between 60 percent and 100 percent.<sup>6</sup> Mental illness increases a person's risk of homelessness in America threefold.<sup>7</sup> Approximately 33 percent of the nation's homeless live with a serious mental health disorder, such as schizophrenia, for which they are untreated.<sup>8</sup> Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment, contributing to future recidivism.<sup>9</sup>

##### Mental Health Services – The Baker Act

The Florida Department of Children and Families (DCF) administers a statewide system of services for substance abuse and mental health (SAMH) prevention, treatment, and recovery for children and adults who are otherwise unable to obtain services. SAMH programs include a range of prevention, acute interventions (e.g., crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.<sup>10</sup>

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<sup>1</sup> Office of Disease Prevention and Health Promotion, *Mental Health*, <https://www.healthypeople.gov/2020/leading-health-indicators/2020-lhi-topics/Mental-Health/determinants> (last visited Feb. 24, 2020) see also, National Institute of Mental Health, *Any Mental Illness (AMI) Among Adults*, <http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml> (last visited Feb. 24, 2020).

<sup>2</sup> National Alliance on Mental Illness, *Mental Health by the Numbers*, <http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers> (last visited Feb. 24, 2020).

<sup>3</sup> John Hopkins Medicine, *Mental Health Disorder Statistics*, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (last visited Feb. 24, 2020).

<sup>4</sup> MentalMenace.com, *Mental Illness: The Invisible Menace; Economic Impact*, <http://www.mentalmenace.com/economicimpact.php> (last visited Feb. 24, 2020).

<sup>5</sup> MentalMenace.com, *Mental Illness: The Invisible Menace: More impacts and facts*, <http://www.mentalmenace.com/impactsfacts.php> (last visited Feb. 24, 2020).

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

<sup>7</sup> Family Guidance Center for Behavioral Health Care, *How does Mental Illness Impact Rates of Homelessness?*, <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/> (last visited Feb. 24, 2020). See also Homeless Hub, *Mental Health*, <https://www.homelesshub.ca/about-homelessness/topics/mental-health> (last visited Feb. 24, 2020).

<sup>8</sup> Homeless Hub, *Mental Health*, <https://www.homelesshub.ca/about-homelessness/topics/mental-health> (last visited Feb. 24, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> 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.

In 1971, the Legislature adopted the Florida Mental Health Act, also known as the Baker Act.<sup>11</sup> The Baker Act authorizes treatment programs for mental, emotional, and behavioral health which are designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders.<sup>12</sup> These treatment programs include, but are not limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to encourage them to assume responsibility for their treatment and recovery.<sup>13</sup> The Baker Act provides legal procedures, protections, and rights to individuals examined or treated for mental illness and addresses legal procedures for examination and treatment including: voluntary admission;<sup>14</sup> involuntary admission;<sup>15</sup> involuntary inpatient treatment;<sup>16</sup> and involuntary outpatient treatment.<sup>17</sup>

The Baker Act requires each county to designate a single law enforcement agency to transfer a person in need of services.<sup>18</sup> If a person is in custody based on noncriminal or minor criminal behavior, law enforcement transports the person to the nearest receiving facility.<sup>19</sup> If, however, the person is arrested for a felony, the person must first be processed in the same manner as any other criminal suspect. Law enforcement must then transport the person to the nearest facility, unless the facility is unable to provide adequate security, in which case the person must be examined and treated wherever he or she is held.<sup>20</sup>

### *Receiving Facilities*

A person experiencing severe emotional or behavioral problems often requires emergency treatment to stabilize his or her situation before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to a person on a voluntary or involuntary basis. Receiving facilities, often referred to as Baker Act facilities, are public or private facilities designated by DCF for the purpose of receiving and holding or referring, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.<sup>21</sup> A public receiving facility is a facility that provides mental health services to all persons, regardless of their ability to pay, and receives state funds for such purpose.<sup>22</sup> Facilities may only use appropriated funds to provide services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.<sup>23</sup>

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services.<sup>24</sup> CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.

As of March 2019, there were 121 Baker Act receiving facilities in Florida, including 53 public receiving facilities and 68 private receiving facilities.<sup>25</sup> Of the 53 public receiving facilities, 40 also contract to provide CSU services.<sup>26</sup>

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<sup>11</sup> Ch. 71-131, Laws of Fla.; ch. 394, part I, F.S.

<sup>12</sup> S. 394.453(1)(a), F.S.

<sup>13</sup> S. 394.453(1)(b), F.S.

<sup>14</sup> S. 394.4625, F.S.

<sup>15</sup> Ss. 397.6772, 397.6798, and 397.6811, F.S.

<sup>16</sup> S. 394.467, F.S.

<sup>17</sup> S. 394.4655, F.S.

<sup>18</sup> S. 394.462(1)(a), F.S.

<sup>19</sup> S. 394.462(1)(g), F.S.

<sup>20</sup> S. 394.462(1)(f) and (g), F.S.

<sup>21</sup> S. 394.455(39), F.S. This term does not include a county jail.

<sup>22</sup> S. 394.455(37), F.S.

<sup>23</sup> Rule 65E-5.400(2), F.A.C.

<sup>24</sup> S. 394.875, F.S.

<sup>25</sup> Department of Children and Families, *Designated Baker Act Receiving Facilities*, (Sept. 9, 2019), <http://www.dcf.state.fl.us/service-programs/samh/crisis-services/docs/baker/Baker%20Act%20Receiving%20Faciliites.pdf> (last visited Feb. 24, 2020).

## Involuntary Admission

A person receiving services on an involuntary basis must be taken to a designated “receiving facility.”<sup>27</sup> He or she cannot be involuntarily held in a receiving facility for examination for longer than 72 hours.<sup>28</sup> Generally, within the 72-hour examination period, one of the following must occur:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement resumes custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.<sup>29</sup>

Under the Baker Act, a court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.<sup>30</sup> The petitioner must show, by clear and convincing evidence, that all available less restrictive treatment alternatives are inappropriate and the person is:

- Mentally ill and, because of the illness, has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Manifestly incapable of surviving alone or with the help of family and friends, and without treatment is likely to suffer from neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.<sup>31</sup>

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate involuntary examinations.<sup>32</sup> A circuit court may enter an *ex parte* order finding that a person meets the criteria for involuntary examination.<sup>33</sup> A law enforcement officer<sup>34</sup> may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.<sup>35</sup> A health care practitioner may initiate an involuntary examination by executing an official form adopted by DCF rule called a *Certificate of Professional Initiating an Involuntary Examination*.<sup>36</sup> The health care practitioner must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.<sup>37</sup> The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:<sup>38</sup>

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

<sup>27</sup> S. 394.455(26), F.S.

<sup>28</sup> S. 394.463(2)(f), F.S.

<sup>29</sup> S. 394.463(2)(i)4., F.S.

<sup>30</sup> Ss. 394.465(6) and 394.467(6), F.S.

<sup>31</sup> S. 394.467(1), F.S.

<sup>32</sup> S. 394.463(2)(a), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> “Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. S. 943.10(1), F.S.

<sup>35</sup> 394.463(2)(a)2., F.S.

<sup>36</sup> The *Certificate of Professional Initiating an Involuntary Examination*, created by DCF, must be executed by health care practitioners initiating an involuntary examination under The Baker Act. The form contains information related to the person’s diagnosis and the health care practitioner’s personal observations of statements and behaviors that support the involuntary examination of such person. See rule reference in Rule 65E-5.280, F.A.C. The form is also online. See, *Certificate of Professional Initiating an Involuntary Examination*, Department of Children and Families,

<https://eds.myflfamilies.com/DCFFormsInternet/Search/OpenDCFForm.aspx?FormId=1063> (last visited Feb. 24, 2020).

<sup>37</sup> S. 394.463(2)(a)3., F.S.

<sup>38</sup> *Id.*

- A physician licensed under ch. 458 or 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by the United States Department of Veterans Affairs or Department of Defense.<sup>39</sup>
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.<sup>40</sup>
- A psychiatric nurse who is certified as an advanced registered nurse practitioner under s. 464.012, F.S., who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.<sup>41</sup>
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

During FY 2017-18, there were 205,781 involuntary examinations initiated in Florida. Law enforcement initiated more than half (51.67 percent), followed closely by those initiated by mental health professionals (46.31 percent), and the remaining 2.02 percent were initiated by a judge's *ex parte* order.<sup>42</sup>

### Voluntary Admission

A receiving facility may provide observation, diagnosis, or treatment to any person 18 years or older or any person under 18 if entry is sought by his or her guardian. A person may voluntarily enter a receiving facility only if he or she is willing and competent to consent to admission and treatment. A person under 18 may be admitted only after a hearing to verify the voluntariness of the consent. If a person is incompetent to consent to treatment,<sup>43</sup> he or she cannot be held under the voluntary provisions of the Baker Act.

A person on voluntary status is presumed to be able to exercise all of his or her rights under the law, including consenting or refusing consent to admission or treatment. If a person is competent, he or she may voluntarily enter any facility he or she chooses. Within 24 hours after voluntary admission, the admitting physician must document in the patient's clinical record that he or she is able to give express and informed consent for admission. If a person is not able to give express and informed consent for admission, he or she must be discharged or transferred to involuntary status.<sup>44</sup>

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<sup>39</sup> S. 394.455(32), F.S.

<sup>40</sup> S. 394.455(5), F.S.

<sup>41</sup> S. 394.455(35), F.S.

<sup>42</sup> Christy, A., et al., *Fiscal Year 2017/2018 Report Annual Report*, Baker Act Reporting Center, Louis de la Parte Florida Mental Health Institute, Department of Mental Health Law & Policy, University of South Florida, June 2019, [https://www.myflfamilies.com/service-programs/samh/publications/docs/BA%20FY%2017-18%20Report.DCFFeedbackMay6\\_USFRRevisionsJune4\\_V9a.pdf](https://www.myflfamilies.com/service-programs/samh/publications/docs/BA%20FY%2017-18%20Report.DCFFeedbackMay6_USFRRevisionsJune4_V9a.pdf) (last visited Feb. 24, 2020).

<sup>43</sup> "Incompetent to consent to treatment" means that a person's judgment is so affected by his or her mental illness that he or she lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment. S. 394.455(15), F.S.

<sup>44</sup> S. 394.4625(1)(f), F.S.

## Mental Health Services – Criminal Defendants

The state forensic system is a network of facilities and community services for criminal defendants needing mental health services.<sup>45</sup> Only an adult, or a juvenile being prosecuted as an adult, who is charged with a felony offense,<sup>46</sup> and adjudicated incompetent to proceed<sup>47</sup> or not guilty by reason of insanity,<sup>48</sup> may be involuntarily committed to a state civil<sup>49</sup> or forensic<sup>50</sup> treatment facility or placed on conditional release<sup>51</sup> by the court.<sup>52</sup> Florida does not provide forensic services for defendants charged with misdemeanor offenses.

### *Pretrial Intervention/Diversion Programs*

The Department of Corrections supervises pretrial intervention programs (PTIs) for defendants with pending criminal charges. Section 948.08, F.S., governs PTIs, also referred to as diversion programs, which are available to any first time offender, or any person not convicted of more than one nonviolent misdemeanor, who is charged with a misdemeanor or third degree felony.<sup>53</sup> The goal of PTI is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, or medical and psychological treatment, as appropriate.<sup>54</sup>

While a defendant is in a PTI, his or her criminal charges remain pending. If a defendant successfully completes a PTI, his or her charges may be dismissed.<sup>55</sup> If the defendant fails to successfully complete the PTI, the program administrator may recommend further supervision or the state attorney may resume prosecution for the offense. The court may not appoint a public defender to represent an indigent defendant who is released to a PTI unless the offender's release is revoked and he or she is subject to imprisonment if convicted.<sup>56</sup>

### *Mental Health Courts*

Mental health courts (MHCs) are problem-solving courts that combine judicial supervision with mental health treatment and other support services with the goal of improving public safety by:

- Reducing criminal recidivism;
- Improving the quality of life of defendants with mental illnesses and increasing their participation in effective treatment; and
- Reducing court-and corrections-related costs, often by providing an alternative to incarceration.<sup>57</sup>

As of October 2019, Florida had 27 operating MHCs authorized under s. 394.47892, F.S.<sup>58</sup> Due to the lack of specific statutory framework for MHCs, eligibility criteria, program requirements, and other processes differ amongst circuits.

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<sup>45</sup> See ch. 916, F.S.

<sup>46</sup> S. 916.106(6), F.S.

<sup>47</sup> S. 916.106(11), F.S.

<sup>48</sup> Fla. R. Crim. P. 3.217.

<sup>49</sup> A "civil facility" is a mental health facility run by or under contract with DCF to serve individuals committed under ch. 394, F.S., and defendants committed under ch. 916, F.S., who do not require the security of 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. S. 916.106(4), F.S.

<sup>50</sup> A "forensic facility" is a separate and secure facility established within DCF or the Agency for Persons with Disabilities to serve 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 under ch. 916, F.S., from nonforensic residents. S. 916.106(10), F.S.

<sup>51</sup> S. 916.304, F.S.

<sup>52</sup> See legislative intent in s. 916.105(1)–(4), F.S.

<sup>53</sup> S. 948.08(1), F.S.

<sup>54</sup> S. 948.08(1), F.S.

<sup>55</sup> S. 948.08(5), F.S. If a case is dismissed without prejudice, the case may be refiled at a later time.

<sup>56</sup> S. 948.08(3) and (4), F.S.

<sup>57</sup> Florida Courts, *Mental Health Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Mental-Health-Courts> (last visited Feb. 24, 2020).

<sup>58</sup> S. 394.47892, F.S., authorizes each county to fund a mental health court program and addresses the funding of the programs.

## Law Enforcement Interaction with Individuals with Mental Illness

Law enforcement is often called to intervene in situations where individuals with mental illness behave in ways that disturb the social order or lead to concerns for others' safety. These situations are often challenging for officers, as individuals with mental illness may not respond well to standard law enforcement approaches.<sup>59</sup> For example, persons who assault police officers are typically under the influence of drugs or alcohol, have a psychiatric disorder, or have co-occurring behavioral health conditions.<sup>60</sup> Additionally, when an officer perceives a person's mental disturbance to be dangerous, he or she may approach the person with increased force to resolve the situation, which may result in an encounter that is dangerous for both the officer and the person with a mental illness.<sup>61</sup>

In 1987, police officers in Memphis, Tennessee responded to a call involving a young man who was threatening people with a knife. After refusing police orders to drop the knife, officers opened fire, and the young man died of multiple gunshot wounds.<sup>62</sup> It was later discovered that the man had a history of mental illness.<sup>63</sup> Community concerns about the young man's death led Memphis to develop a better way to intervene with individuals in a mental health crisis, which became known as the Memphis model of Crisis Intervention Training (CIT).<sup>64</sup>

### *Crisis Intervention Training*

There are nearly 2,700 CIT programs in the United States,<sup>65</sup> including seven regional or multi-county and 26 county programs in Florida.<sup>66</sup> CIT offers an alternative approach to standard law enforcement practices tailored to the needs of individuals with mental illness. CIT programs provide information on:<sup>67</sup>

- **Mental health:** provides officers with a better understanding of the diagnostic and treatment issues related to mental health functioning<sup>68</sup> and discusses the civil rights of persons with mental illness, state commitment statutes, and mental health assessment.<sup>69</sup>
- **Community support services:** provides officers with information on the support services available within their own communities.<sup>70</sup>
- **Police procedures and liability issues:** covers protocols relating to officer tactical training and safety restraints; provides information of how officers can manage stress; and emphasizes legal, safety and policy issues.<sup>71</sup>

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<sup>59</sup> Watson, Amy, et. al., *Improving police response to persons with mental illness: A Multilevel conceptualization of CIT*, National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2655327/pdf/nihms69181.pdf> (last visited Feb. 24, 2020).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> University of Memphis CIT Center, *Overview: The CIT Program: Background*, <http://www.cit.memphis.edu/overview.php?page=1> (last visited Feb. 24, 2020).

<sup>63</sup> *Id.*

<sup>64</sup> University of Memphis CIT Center, *Overview: The Memphis Model*, <http://www.cit.memphis.edu/overview.php?page=1> (last visited Feb. 24, 2020).

<sup>65</sup> The Journal of the American Academy of Psychiatry and the Law, *Effectiveness of Police Crisis Intervention Training Programs*, <http://jaapl.org/content/early/2019/09/24/JAAPL.003863-19> (last visited Feb. 24, 2020). University of Memphis CIT Center, *Overview: National Model*, <http://www.cit.memphis.edu/overview.php?page=7> (last visited Feb. 24, 2020).

<sup>66</sup> University of Memphis CIT Center, *Escambia CIT Programs*, <http://www.cit.memphis.edu/cjus/index.php?classname=cCountyDetails&func=showCountyDetails&county=Escambia&stateid=10> (last visited Feb. 24, 2020). Regional and multi-county programs include Central Florida, North Central Florida, Northwest Florida CIT, Northwest Florida Regional Task Force, Treasure Coast, Volusia/Flagler, Lake/Sumter, and Pasco/Hernando. County programs include Bay, Bradford, Broward, Charlotte, Citrus, Clay, Columbia, Miami-Dade (2), DeSoto, Gadsden, Gulf, Holmes, Lee, Leon, Marion, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Pinellas, Sarasota, Walton, and Washington.

<sup>67</sup> University of Memphis CIT Center, *National Curriculum*, <http://www.cit.memphis.edu/curriculum.php?id=0> (last visited Feb. 24, 2020).

<sup>68</sup> Includes lectures on an overview of severe and persistent mental illness, an in-depth examination of mood and thought disorders, review of issues related to children and youth, examination of cognitive disorders, special focus on issues such as PTSD and suicide, examination of substance abuse and co-occurring disorders, and an introduction to psychopharmacology.

<sup>69</sup> University of Memphis CIT Center, *Mental Health Didactics: Overview of Mental Health Didactics*, <http://www.cit.memphis.edu/curriculum.php?id=1> (last visited Feb. 24, 2020).

<sup>70</sup> University of Memphis CIT Center, *Community Support: Overview of Community Support*, <http://www.cit.memphis.edu/curriculum.php?id=2> (last visited Feb. 24, 2020).

<sup>71</sup> University of Memphis CIT Center, *Law Enforcement: Overview of Law Enforcement*, <http://www.cit.memphis.edu/curriculum.php?id=5> (last visited Feb. 24, 2020).

- **De-escalation training:** trains officers on the methods necessary for on-scene crisis intervention and includes role playing, scenario usage, and officer safety issues.<sup>72</sup>
- **Jail diversion strategies and mental health courts:** introduces officers to diversion strategies and established programs within the criminal justice system to integrate incarcerated individuals with local mental health resources, and work with the mental health courts.<sup>73</sup>

The training also includes site visits to programs or facilities used by individuals with mental illness, such as homeless shelters, outpatient treatment centers, drop-in centers, or state hospitals where trainees can interact with individuals with mental illness.<sup>74</sup>

Research indicates that alternatives to standard law enforcement approaches, such as CIT, are effective tools for approaching individuals with mental illness, resulting in lower rates of injury and death. For example, these approaches can help law enforcement to de-escalate a situation and can help divert individuals with mental illness from jails into treatment settings more appropriate for dealing with the mental illness underlying the behavior.<sup>75</sup> Additionally, research indicates that CIT is effective at increasing officers' knowledge about and improving attitudes toward individuals with mental illness.<sup>76</sup> Data from observations of officers' behavior indicates that CIT is associated with decreased likelihood of arrest and increased likelihood of referral or transport to mental health services. In one study, while CIT trained officers and non-CIT trained officers used force at the same rates, CIT trained officers were significantly more likely than non-CIT trained officers to use verbal engagement or negotiation as the highest level of force in a situation involving a person with mental illness.<sup>77</sup>

### Effect of Proposed Changes

PCS for HB 293 creates the Law Enforcement Behavioral Health Intervention Unit Pilot Program (BHI Pilot Program) and the Misdemeanor Mental Health Diversion Pilot Program (MHD Pilot Program) for a period of three years in Flagler, Putnam, St. Johns, and Volusia counties, and encourages pilot counties to apply for criminal justice grants to support the programs. The purpose of the programs is to:

- Divert persons with mental health, substance use, or co-occurring mental health and substance use disorders into community-based treatment instead of the criminal justice system;
- Improve law enforcement interactions with such individuals;
- Provide defendants charged with a misdemeanor or an ordinance violation who may have a mental health disorder the opportunity to be evaluated and to receive appropriate treatment and services;
- Improve access to community-based treatment and services; and
- Decrease criminal justice spending by reducing recidivism.

Subject to available funding, the bill directs the Sheriff's Office in each county to establish a Behavioral Health Intervention Unit (BHI Unit) by October 1, 2020, and requires the following:

- Specialized training of an appropriate number of deputies in understanding and appropriately responding to individuals with mental health, substance abuse, or co-occurring disorders.
- Support from specified mental health professionals to assist and support deputies.

<sup>72</sup> University of Memphis CIT Center, *De-Escalation Training: Overview of De-Escalation Training*, <http://www.cit.memphis.edu/curriculum.php?id=3> (last visited Feb. 24, 2020).

<sup>73</sup> University of Memphis CIT Center, *Research and Systems: Jail Diversion*, <http://www.cit.memphis.edu/curriculum.php?id=6&page=1> (last visited Feb. 24, 2020).

<sup>74</sup> University of Memphis CIT Center, *Site Visits: Overview of Site Visits*, <http://www.cit.memphis.edu/curriculum.php?id=4> (last visited Feb. 24, 2020).

<sup>75</sup> University of Memphis CIT Center, *Overview: Jail Diversion and Referral to Healthcare*, <http://www.cit.memphis.edu/overview.php?page=4> (last visited Feb. 24, 2020).

<sup>76</sup> Compton, Michael, et al., *The Police-Based Crisis Intervention Team (CIT) Model: I. Effects on Officers' Knowledge, Attitudes, and Skills*, *Psychiatric Services*, Vol. 65, Issue 4. <https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201300107> (last visited Feb. 24, 2020).

<sup>77</sup> *Id.*

- Each BHI Unit must:
  - Respond to calls for service from persons suspected of having a mental health, substance abuse, or co-occurring disorder;
  - Implement strategies to engage such persons in continued treatment services;
  - Develop a support services plan to assist with transportation, housing assistance, and educational or employment opportunities; and
  - Implement strategies to monitor and maintain regular contact with individuals receiving community-based treatment to help ensure continued participation.

The bill requires each county, subject to available funding and resources, to establish the MHD Pilot Program by October 1, 2020. The bill provides the following for each MHD Pilot Program:

- Within 24 hours after a misdemeanor defendant is booked into a jail, and when possible before a defendant's first appearance before a judge, the defendant may be evaluated using a standardized validated mental health screening instrument to determine if there is an indication of a mental health disorder.
- If the evaluation indicates a mental health disorder, and:
  - The defendant meets the criteria for involuntary examination under the Baker Act, a professional certificate for involuntary evaluation shall be issued and the defendant must be transferred to a CSU for further evaluation.
  - The defendant does not meet criteria for involuntary examination, he or she must be given the opportunity to voluntarily enter a CSU, by written agreement and pending availability of CSU bed space.
    - If the defendant does not voluntarily enter a CSU, or is waiting to enter a CSU, he or she must receive continued mental health treatment in the jail, or upon release from jail custody, must be required to comply with any court-ordered mental health assessment or treatment.
- A court's order for transporting a defendant from a jail to a CSU may be made with a hold for jail custody or for appearance before the court to ensure the defendant is only released back to the custody of the jail or to appear before the court, unless the court orders otherwise.
- Each county must create a separate mental health court docket, and the case of each defendant identified as having a mental health disorder must be placed on such docket, with specified one or two week review hearings.
- When a defendant enters a CSU or is identified as having a mental health disorder and does not enter a CSU, he or she must complete all recommended inpatient or outpatient treatment in order to remain on the court's mental health docket.
- When a defendant is released into the community on the condition he or she will complete a mental health treatment plan, the county's BHI Unit must be promptly notified and must attempt to contact the defendant within 48 hours, and must continue efforts to maintain contact with the defendant to ensure continued participation in community-based treatment.
- If a defendant fails to comply with recommended treatment, and the BHI Unit or mental health service providers are unable to recommend further efforts to improve his or her compliance, the defendant's case may be removed from the mental health court docket and disposed of as any other case.
- If the defendant successfully completes all treatment recommendations, the state attorney must consider dismissing the charges, or if dismissal is not appropriate, consider referring the case to a separate mental health court or other available diversion program – the defendant may also choose to contest the charge or charges.

The bill requires annual reporting of specific data during each year the BHI and MHD Pilot Programs are in operation.

The bill amends s. 394.658, F.S., to exempt fiscally constrained counties from providing local matching funds when awarded grants to establish either of the pilot programs.<sup>78</sup>

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<sup>78</sup> In 2007, the Legislature created the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program (Program). The purpose of the Program is to provide funding to counties to plan, implement, or expand initiatives that increase public safety, avert increased spending on criminal and juvenile justice, and improve the accessibility and effectiveness of treatment services for adults and

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The bill will likely have a fiscal impact on Baker Act receiving facilities, courts, local law enforcement, and county jails.

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

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.658, F.S., relating to Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program requirements.

**Section 2:** Creates s. 916.1095, F.S., relating to Law Enforcement Behavioral Health Intervention Unit Pilot Program.

**Section 3:** Creates s. 916.135, F.S., relating to Misdemeanor Mental Health Diversion Pilot Program.

**Section 4:** 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 may have a negative impact on prison beds by diverting misdemeanor defendants who have a mental health disorder to community-based treatment and reducing recidivism by such individuals, thereby reducing the likelihood they are later charged with a felony as a subsequent offense.

The bill will likely have a fiscal impact on Baker Act receiving facilities and courts.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have a negative impact on jail beds by diverting defendants with a mental health disorder to community-based treatment and reducing recidivism by such individuals.

The bill will likely have a fiscal impact on Baker Act receiving facilities, courts, local law enforcement, and county jails.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Unknown.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**