



# ***State Mental Health Treatment Facility Forensic Waitlist Review***

***Florida Department of Children and Families  
Office of Substance Abuse and Mental Health***

**Mike Carroll**  
*Interim Secretary*

**Rick Scott**  
*Governor*

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**Recommended Citation**

*State Mental Health Treatment Facility Forensic Waitlist Review (2014)*. Office of Substance Abuse and Mental Health, Department of Children and Families, Tallahassee, Florida.

**Electronic Copy of the Publication**

This publication may be accessed electronically through the following Internet World Wide Web site: <http://www.myflfamilies.com/service-programs/substance-abuse/reports>

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**Publication Version**

1.0 November 2014

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## Introduction

Florida Statute designates the Department of Children and Families (hereinafter referred to as “DCF” or “Department”) as the mental health and substance abuse authority of the state of Florida and directs the Department to create the Office of Substance Abuse and Mental Health (hereinafter referred to as “SAMH”), the legislatively-appointed state authority for mental health, substance abuse and methadone services<sup>1</sup>. The office is responsible for the planning, evaluation, and implementation of a comprehensive statewide system of care for the prevention, treatment, and recovery of children and adults with substance abuse and/or mental health illnesses in the state.

Within SAMH are three program areas:

- Substance Abuse and Mental Health Program Office;
- State Mental Health Treatment Facilities (SMHTF); and
- The Sexually Violent Predator Program (SVPP).

Each of these areas has its own statutory authority, target populations, and trends that impact implementation. The office is led by the Assistant Secretary for Substance Abuse and Mental Health, and is supported by the:

- Director for Substance Abuse and Mental Health;
- Director of State Mental Health Treatment Facilities; and
- Director for the Sexually Violent Predator Program.

These positions are based in Tallahassee, at the Department’s Central Office. Other than three public mental health treatment facilities in northern Florida, the Department contracts for all behavioral health services. These contracts are executed and administered either at the Central Office or within the regional structure of the Department by a SAMH Director.

Pursuant to section 916.107(1)(a), Florida Statutes, persons adjudicated incompetent to proceed or not guilty by reason of insanity that have been committed to the Department shall be transferred from a county jail within 15 days following the date the Department receives a completed copy of the court commitment order containing all documentation required by Rules 3.210-219, Florida Rules of Criminal Procedure.

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<sup>1</sup> See, s. 394.457(1), F.S.; ch.65D-30.002(57), F.A.C. and ch.65D-30.014(1), F.A.C.

## Forensic Waitlist Review

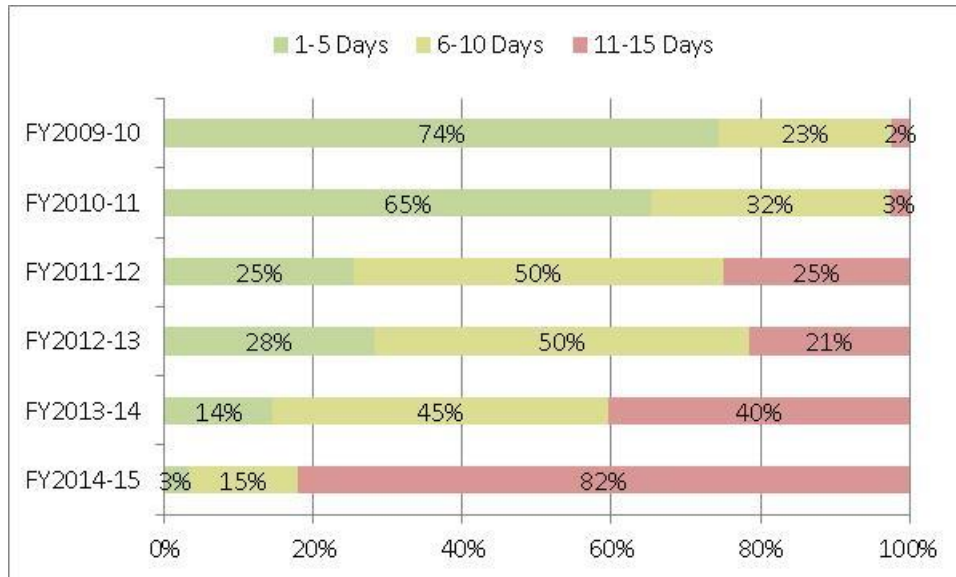
Since July 1, 2007, the Department has consistently met the 15 days admission standard as defined in law. Recently, however, the Department has observed a trend that has caused concern. The average number of days to admit an individual into a forensic facility has shifted to the upper range of the 15 day window. Figure 1 shows the number of persons admitted to the forensic service within 15 days<sup>2</sup>.

**Figure 1. Number of persons admitted to a forensic facility within 15 days by range of days and fiscal year (July 1, 2009 through November 4, 2014).**



<sup>2</sup> Data presented in this report was obtained from the Department's Forensic Services Database. The results may not match values previously reported by the Department. The SMHTF Program Office has been working to correct historical data reporting exceptions, and is working with the Department's Office of Information Technology Services to upgrade the databases to state standards.

**Figure 2. Percent of persons admitted to a forensic facility within 15 days by range of days and fiscal year (July 1, 2009 through November 4, 2014).**



The data in Figure 2 shows that from FY2009-10 through FY2012-13, on average, about 87 percent of all persons on the waitlist were admitted to a forensic facility within 10 days. From July 1, 2013 through November 4, 2014, the data shows a shift in that more persons (21 percent in FY2012-13; 40 percent in FY2013-14 and 82 percent from July 1, 2014 through November 4, 2014) are being admitted between 11 and 15 days than between 1 to 10 days. The shift suggests that the current SMHTF admission and discharges processes might not be keeping up with changes to the overall forensic system.

The State Mental Health Treatment Facility program staff analyzed historical data to identify potential root causes for the shift in the number of days to admit individuals, and the initial review identified three factors contributing to the forensic waitlist. These include:

1. Number of commitments by commitment status;
2. Days to restore an individual to trial competency; and
3. Number of days for an individual recommended as competent to be returned to his or her county of jurisdiction.

This paper will present our analyses related to each of the three primary factors, and will offer recommendations to reduce the number of days it takes to admit an individual into a forensic facility.

## State Mental Health Treatment Facility Services

The State Mental Health Treatment Facility (hereinafter referred to as “SMHTF”) system includes four forensic facilities, and three civil facilities that serve individuals who continue to meet forensic commitment criteria but no longer require secure placement in a forensic facility. Table 1 lists the bed capacities for secure forensic facilities that serve persons committed under Chapter 916, F.S., by fiscal year.

**Table 1. Forensic Facility Bed Capacities by SMHTF and Fiscal Year**

Facility	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14	FY14-15	Percent Change FY09-10 to FY14-15 <sup>3</sup>
Florida State Hospital - Forensic Service	528	528	469	469	469	469	-11.2%
North Florida Evaluation and Treatment Center	216	216	193	193	193	193	-10.6%
South Florida Evaluation and Treatment Center	238	238	238	238	238	238	0.0%
Treasure Coast Forensic Treatment Center	198	198	198	208	208	208	5.1%
<b>Forensic Service</b>	<b>1,180</b>	<b>1,180</b>	<b>1,098</b>	<b>1,108</b>	<b>1,108</b>	<b>1,108</b>	<b>-6.1%</b>

In general, individuals adjudicated Incompetent to Proceed (hereinafter referred to as “ITP”) or Not Guilty by Reason of Insanity (hereinafter referred to as “NGI”) are admitted to a secure forensic facility for competency restoration or treatment services. When a facility determines that an individual’s competency has been restored, based upon an evaluation and observations, a report is sent to the court recommending that the individual return to the county of jurisdiction to proceed with their criminal defense. In the case of NGI commitments, an individual may be recommended for conditional release to community services or outright discharge when the individual is no longer deemed to be manifestly dangerous to persons or property. In some specific situations, a resident committed as ITP may be recommended for conditional release for community based treatment if the individual is deemed to be at low risk for harm to persons or property. Individuals that continue to require inpatient services in a SMHTF may be transferred to a civil treatment facility. In these situations, individuals continue to receive services specific to their commitment status but also receive services that will increase the likelihood that the individual will meaningfully contribute to their community at the resolution of their criminal case. As shown in Table 1, secure forensic bed capacity was reduced by approximately six percent between FY2009-2010 and FY2014-15.

<sup>3</sup> In FY2007-08 the forensic service had an all-time high of 1,232 beds. The change in capacity from FY2007-08 to FY2014-15 represents a 10.1 percent decrease in beds. Since persons committed as ITP represent the vast majority of admissions, and each secure forensic bed generally turns over about two times per year, the 124 bed difference between FY2007-08 and FY2014-15 is estimated to represent about 225 persons that could be served when adjusting for persons committed as NGI or individuals found competent but remain in the Department’s custody.

## Commitments

Appendix A illustrates the forensic mental health process starting at the time of arrest, and identifies performance outcome measures. Table 2 compares persons committed as NGI to those committed as ITP.

**Table 2. Comparison of Commitment Statuses**

Category	Chapter 916, F.S. Not Guilty by Reason of Insanity	Chapter 916, F.S. Incompetent to Proceed
Primary service need	Comprehensive services within a rehabilitation recovery model plus demonstration of successful treatment compliance under decreasing levels of supervision and security.	Target is restoration of competency with rehabilitation services provided in anticipation of community reintegration following the outcome of the criminal trial.
Criteria for recommitment versus release	Based on “manifestly dangerous” language.	Based on “likely to injure” language.
How released	<ul style="list-style-type: none"> <li>• Conditional release</li> <li>• Ended by court order</li> </ul>	<ul style="list-style-type: none"> <li>• If competent, discharged to jail.</li> <li>• If incompetent and not in need of hospitalization, may be conditionally released</li> <li>• If charges are dismissed by the Office of State Attorney</li> </ul>
Court permission necessary for release?	Yes	Yes
Jurisdiction of committing court	Continues through hospitalization and conditional release until specifically ended by court order.	Continues until specifically ended by court order or by action of State Attorney.
Primary resource in searching for appropriate placement	Managing Entities/Forensic case managers.	Managing Entities/Forensic case managers.
Average length of stay	Two years	Six months while trial competency restored within 125 days

In general, DCF will retain custody of an individual as long as they present as dangerous to persons or property. Within the group of individuals committed as ITP, there is a subset of persons that have been found competent and ready to be transferred back to the county of jurisdiction but remain in the Department’s custody. In 2003, the Third District Court of Appeal denied the Department’s petition for Writ of Prohibition seeking to vacate a trial court order and motion for rehearing in the case of *Brantley v. Rubio* 870 So.2d 849<sup>4</sup>. The trial court found that Mr. Rubio was competent to stand trial, but his continued competence depended on an appropriate course of treatment which he could not receive in jail. Accordingly, the trial court remanded Mr. Rubio into the custody of the Department so that his competency could be assured at the time of trial. The trial court based its order on Florida Rule of

<sup>4</sup> [http://www.floridasupremecourt.org/clerk/briefs/2003/1801-2000/03-1926\\_Jurisni.pdf](http://www.floridasupremecourt.org/clerk/briefs/2003/1801-2000/03-1926_Jurisni.pdf)



## Forensic Waitlist Review

Criminal Procedure 3.212(c)(2) and Chapter 916, Florida Statutes (2003). The Third District Court of Appeal held that Mr. Rubio had not been declared “competent unconditionally”, and the trial court therefore, did not exceed its authority because Rule 3.212 allows the trial court to order the necessary treatment for a defendant whose competence depends on that treatment. The average length of stay for persons retained by the Department under the Rubio status generally lasts an additional four months over the average length of stay for persons found competent to proceed and returned to their county of jurisdiction. For every one person subject to the Rubio decision, two persons deemed incompetent to proceed could have been admitted and found competent.

Table 3 shows the number of forensic commitments by commitment status and fiscal year.

**Table 3. Number of Forensic Commitments by Commitment Status And Fiscal Year (July 1, 2009 Through November 20, 2014)**

COMMITMENT STATUS	FY0910	FY1011	FY1112	FY1213	FY1314	FY1415	Total
INCOMPETENT TO PROCEED	1,432	1,374	1,519	1,463	1,549	613	7,950
NOT GUILTY BY REASON OF INSANITY	102	107	87	62	48	18	424
COMPETENT TO PROCEED, DEPARTMENT RETAINS CUSTODY	1	8	3	11	11	3	37
<b>Grand Total</b>	<b>1,535</b>	<b>1,489</b>	<b>1,609</b>	<b>1536</b>	<b>1,608</b>	<b>634</b>	<b>8,411</b>

As shown in Table 3, approximately 95 percent (7,950 of 8,411) of all forensic commitments are related to persons found incompetent to proceed to trial.

Table 4 shows the breakdown of forensic commitments by judicial circuit.

**Table 4. Number of Forensic Commitments by Judicial Circuit and Fiscal Year (July 1, 2009 through November 20, 2014; Sorted in Descending Order by Number of Commitments)**

JUDICIAL CIRCUIT	FY0910	FY1011	FY1112	FY1213	FY1314	FY1415	Grand Total
C17	194	221	226	218	202	91	1,152
C11	196	169	153	139	179	57	893
C04	139	116	128	131	154	72	740
C09	94	110	130	120	133	52	639
C13	92	86	119	120	96	41	554
C06	95	107	107	86	97	30	522
C15	71	85	93	116	94	30	489
C01	120	78	82	74	56	22	432
C02	70	70	94	64	87	44	429
C10	84	57	75	69	76	30	391
C05	80	66	71	53	53	27	350
C08	57	65	64	65	68	25	344
C12	47	55	56	65	72	22	317
C18	40	48	42	50	45	17	242
C14	35	36	55	34	40	22	222
C07	39	38	37	38	50	17	219
C20	34	35	34	43	38	16	200
C19	20	20	21	24	41	7	133
C16	19	23	12	7	10	10	81
C03	9	4	10	20	17	2	62
<b>Grand Total</b>	<b>1,535</b>	<b>1,489</b>	<b>1,609</b>	<b>1,536</b>	<b>1,608</b>	<b>634</b>	<b>8,411</b>

Historically, Circuits 17 (Broward County; 1,152 of 8,411) and 11 (Dade County; 893 of 8,411) have accounted for approximately 24 percent (2,045 of 8,411) of all forensic commitments. According to the Florida Department of Health<sup>5</sup>, Dade County had 13.2 percent (2,139,973 of 16,174,777) and Broward County had 9.1 percent (1,472,029 of 16,174,777) of the juvenile and adult population in calendar year 2014. In calendar year 2013 (the most recent year available), the Florida Department of Law Enforcement (hereinafter referred to as “FDLE”) reported 904,634 arrests<sup>6</sup> in Florida. According to

<sup>5</sup> <http://www.floridacharts.com/FLQuery/Population/PopulationRpt.aspx>

Population by Year by County; Age=15-19, 20-24, 25-34, 35-44, 45-54, 55-64, 65-74, 75-84, 85+

<sup>6</sup> [http://www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF\\_annual13.aspx](http://www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF_annual13.aspx)

FDLE<sup>7</sup>, Broward and Dade counties accounted for five and four percent of arrests for index offenses<sup>8</sup> respectively when comparing the number of arrests to the total county population<sup>9</sup>.

## Performance measures

A primary goal of the forensic service is to safeguard the people of Florida, and prepare individuals committed under Chapter 916, F.S., so they may meaningfully participate in their criminal proceedings. In terms of measuring the effectiveness of the SMHTF forensic service, the Department has three General Appropriation Act measures and one Quality Indicator. These measures include:

- **M0015 Average number of days to restore competency for adults in forensic commitment.**
  - This measure is calculated for each person committed as ITP by subtracting the admission date from the date a report finding the individual competent to proceed to trial is sent to the court. The days to restore are then ranked, and the top five and bottom five percent of cases are trimmed or removed for a total of ten percent. The number of persons found competent within 125 days is the numerator. The denominator is all persons found competent for the time period.
- **M0373 Number of adults in forensic commitment, per Ch. 916, F.S., served**
  - The measure is calculated by adding the census at the beginning of the fiscal year and all new admissions during the fiscal year for clients who have a forensic legal status. The count is unduplicated.
- **M0361 Number of people on forensic admission waiting list over 15 days.**
  - Count of all persons committed pursuant to Ch. 916, F.S. who have not been admitted to a state mental health treatment facility within 15 calendar days from the date that the complete commitment packet is received in the Forensic Admission Coordinator's office of the Mental Health Program Office.
- **QDTP Average number of days it takes for a county to transport an individual from a SMHTF to the county of jurisdiction.**
  - This quality indicator measures how long it takes for a person found competent or no longer in need of services in a SMHTF to be returned to their county of jurisdiction. For each person discharged, the date the court was notified via a forensic evaluation of a person's change in status is subtracted from the discharge date. Rule 3.212(6)<sup>10</sup>, Florida

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<sup>7</sup> [http://www.fdle.state.fl.us/Content/getdoc/08a2f5b9-d6f2-4b20-9d24-0ac991018602/offcty\\_index.aspx](http://www.fdle.state.fl.us/Content/getdoc/08a2f5b9-d6f2-4b20-9d24-0ac991018602/offcty_index.aspx)

<sup>8</sup> Index offenses include: Murder, Forcible Sex Offenses, Robbery, Aggravated Assault, Burglary, Larceny, and Motor Vehicle Theft

<sup>9</sup> FDLE lists the total population for each county. Included in this number are all adults and children as well as individuals whose age is not reported. Dade was ranked 2<sup>nd</sup> and Broward 12<sup>th</sup> in terms of index offenses per 100,000 persons.

<sup>10</sup>

[http://www.floridabar.org/TFB/TFBResources.nsf/0/BDFE1551AD291A3F85256B29004BF892/\\$FILE/Criminal.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/0/BDFE1551AD291A3F85256B29004BF892/$FILE/Criminal.pdf?OpenElement)

Rules of Criminal Procedure, states in part that for persons committed as ITP, “The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby.” The Department interprets that rule to mean that the county of jurisdiction shall transport the individual from a SMHTF to the county with sufficient time for a hearing to be held with 30 days.

### Days to Restore Competency

Table 5 shows the total number of competent discharges by service, SMHTF and fiscal year.

**Table 5. Number of individuals Restored to Trial Competency by Service, Facility and Fiscal Year (July 1, 2009 through October 31, 2014)**

SERVICE/ FACILITY	COMPETENT DISCHARGES						TOTAL COMPETENT DISCHARGES
	FY0910	FY1011	FY1112	FY1213	FY1314	FY1415	
<b>Civil</b>	<b>8</b>	<b>18</b>	<b>51</b>	<b>65</b>	<b>40</b>	<b>13</b>	<b>195</b>
FSHC	8	12	38	49	32	10	149
NEFSH	0	6	10	9	4	2	31
SFSHC	0	0	3	7	4	1	15
<b>Forensic</b>	<b>748</b>	<b>1,170</b>	<b>1,147</b>	<b>1,244</b>	<b>1,109</b>	<b>412</b>	<b>5,830</b>
FSHF	285	467	369	466	422	148	2,157
TCFTC	161	269	283	314	250	102	1,379
SFETC	162	243	239	261	231	78	1,214
NFETC	140	191	256	203	206	84	1,080
<b>Total</b>	<b>756</b>	<b>1,188</b>	<b>1,198</b>	<b>1,309</b>	<b>1,149</b>	<b>425</b>	<b>6,025</b>

As shown in Table 5, approximately 96.8 percent (5,830 of 6,025) of all persons found competent have been served in the forensic service (shown in red).

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Table 6 shows the average days to restore trial competency.

**Table 6. Average Days to Restore an Individual to Trial Competency by Facility and Fiscal Year (July 1, 2009 through October 31, 2014; Sorted in Ascending Order by Average Days to Restore Trial Competency)**

SERVICE/ FACILITY	AVERAGE DAYS TO RESTORE COMPETENCY						OVERALL AVERAGE DAYS TO RESTORE COMPETENCY
	FY0910	FY1011	FY1112	FY1213	FY1314	FY1415	
<b>Civil</b>	<b>143</b>	<b>183</b>	<b>233</b>	<b>264</b>	<b>288</b>	<b>324</b>	<b>250</b>
FSHC	143	148	187	245	240	244	211
NEFSH	0	0	256	191	225	112	225
SFSHC	0	254	465	356	739	827	448
<b>Forensic</b>	<b>92</b>	<b>116</b>	<b>114</b>	<b>112</b>	<b>106</b>	<b>127</b>	<b>111</b>
FSHF	92	103	101	100	86	95	97
TCFTC	75	109	122	107	98	113	106
SFETC	101	115	115	104	125	152	115
NFETC	97	127	114	128	114	141	119
<b>Total</b>	<b>92</b>	<b>116</b>	<b>114</b>	<b>112</b>	<b>106</b>	<b>127</b>	<b>115</b>

As shown in Table 6, the forensic facilities (shown in red) generally find individuals competent to proceed to trial below the 125 day standard as defined in the General Appropriation Act. The three civil facilities (shown in green) typically receive persons committed as ITP that have not responded sufficiently to treatment services provided by a secure forensic facility. Rule 3.213(a)(1), Florida Rules of Criminal Procedure, allows for the dismissal of felony criminal charges after five years have elapsed from the determination that the individual was incompetent to proceed.

On average, 99 percent of all persons committed as ITP are found competent within three years. In general, persons that are not found competent and do not present as a danger to person or property are transferred to a civil facility following notification to the committing court. Once in the civil service, the individual continues to receive competency restoration services, but also receives services aimed at ensuring a successful reintegration of the individual back into the community of his or her choice at the conclusion of their criminal proceedings.

Forensic Waitlist Review

Table 7 shows the total number of discharges and average days to return an individual from a secure forensic facility to the circuit with jurisdiction.

**Table 7. Forensic Discharges by Judicial Circuit and Fiscal Year.**

JUDICIAL CIRCUIT	NUMBER OF FORENSIC DISCHARGES					AVERAGE DAYS TO RETURN AN INDIVIDUAL TO THEIR JUDICIAL CIRCUIT					TOTAL NUMBER OF FORENSIC DISCHARGES	OVERALL AVERAGE DAYS TO RETURN AN INDIVIDUAL TO THEIR JUDICIAL CIRCUIT
	FY0910	FY1011	FY1112	FY1213	FY1314	FY0910	FY1011	FY1112	FY1213	FY1314		
C15	29	36	18	24	14	25	27	28	28	31	121	27
C02	25	30	27	23	33	21	24	23	23	29	138	24
C05	22	53	51	49	34	24	22	25	24	20	209	23
C12	17	44	45	53	46	27	22	21	21	20	205	22
C08	31	35	48	53	50	21	21	21	20	17	217	20
C17	119	191	185	126	154	15	17	18	26	25	775	20
C18	18	28	40	30	32	24	20	21	18	18	148	20
C06	45	76	71	90	66	23	19	20	19	20	348	20
C03	1	4	3	16	10	15	14	20	22	19	34	20
C14	17	25	41	35	34	22	19	19	19	21	152	20
C07	26	22	26	22	25	17	19	22	21	18	121	19
C13	36	66	86	102	75	19	18	15	19	20	365	18
C20	16	22	32	32	26	17	16	19	18	16	128	17
C04	61	100	88	97	102	17	18	17	16	16	448	17
C16	10	12	11	6	5	16	20	13	19	18	44	17
C09	43	81	99	99	94	16	16	17	16	15	416	16
C01	62	88	65	75	48	13	15	15	16	18	338	15
C19	13	10	11	16	18	12	13	15	15	16	68	14
C10	50	63	52	50	69	14	11	16	16	15	284	14
C11	86	109	97	83	101	8	8	9	13	18	476	11
<b>Total</b>	<b>727</b>	<b>1,095</b>	<b>1,096</b>	<b>1,081</b>	<b>1,036</b>	<b>17</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>19</b>	<b>5,035</b>	<b>18</b>

As shown in Table 7, the average number of days to transport an individual back to their judicial circuit is 18 days. The standard deviation for pickup days is approximately nine days. By standardizing the days to pickup by circuit, outliers can be identified.

Table 8 shows the standardized values for each circuit by fiscal year.

**Table 8. Standardized values for days to return an individual to the circuit with jurisdiction.**

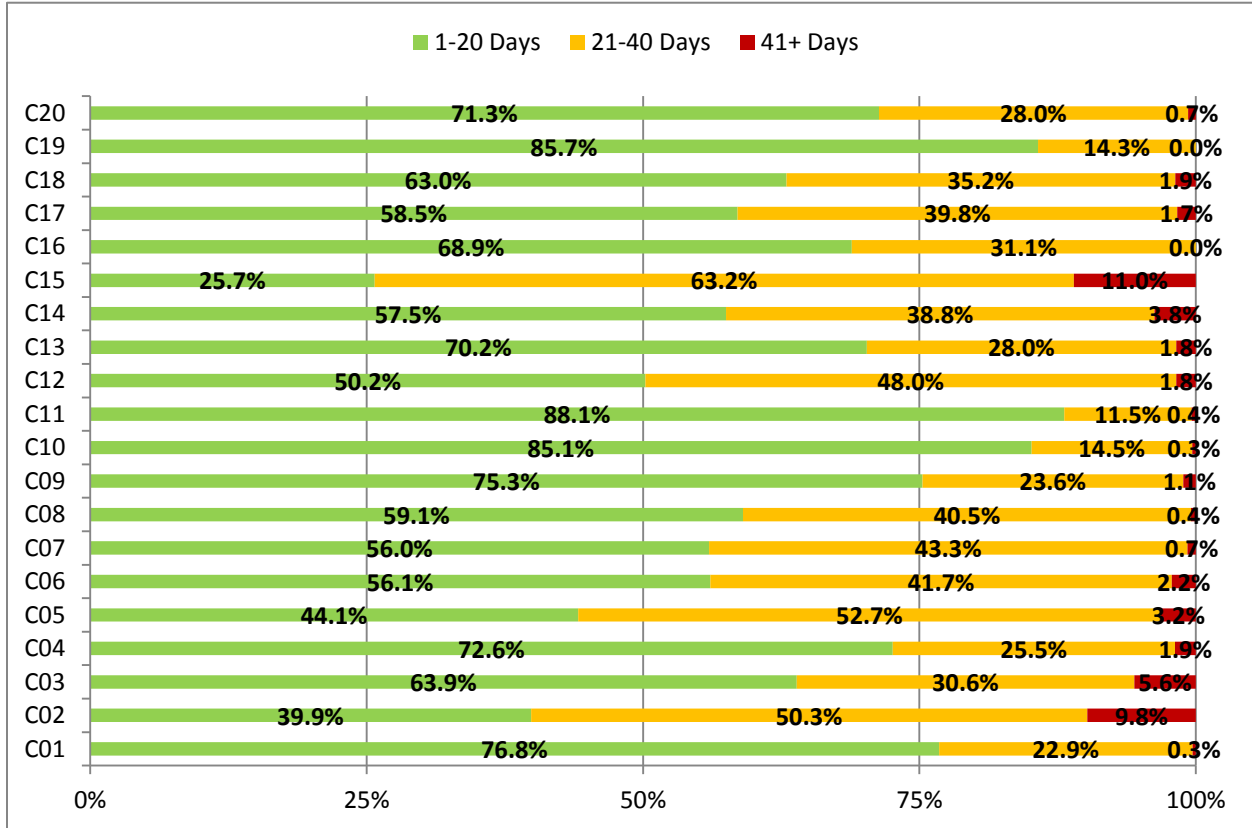
JUDICIAL CIRCUIT	FY0910	FY1011	FY1112	FY1213	FY1314	FY1415	Grand Total
C15	0.76	0.99	1.07	1.09	1.42	1.28	1.05
C02	0.29	0.64	0.57	0.55	1.19	0.65	0.68
C05	0.66	0.46	0.76	0.65	0.27	-0.13	0.53
C12	1.02	0.48	0.35	0.36	0.23	-0.30	0.34
C06	0.51	0.11	0.26	0.06	0.19	0.67	0.22
C17	-0.34	-0.15	-0.03	0.87	0.81	0.23	0.21
C14	0.45	0.06	0.10	0.08	0.30	0.56	0.19
C08	0.28	0.39	0.33	0.22	-0.09	-0.41	0.17
C07	-0.10	0.14	0.41	0.30	-0.04	0.37	0.16
C18	0.65	0.27	0.28	-0.01	-0.03	-0.37	0.15
C03	-0.34	-0.43	0.26	0.40	0.14	-0.79	0.14
C13	0.06	0.00	-0.32	0.13	0.23	-0.16	0.00
C20	-0.08	-0.18	0.06	0.00	-0.28	-0.41	-0.12
C04	-0.12	0.02	-0.12	-0.22	-0.19	-0.06	-0.12
C16	-0.25	0.17	-0.59	0.07	-0.03	0.11	-0.14
C09	-0.22	-0.24	-0.08	-0.18	-0.34	0.00	-0.19
C01	-0.54	-0.34	-0.34	-0.27	-0.03	-0.03	-0.30
C19	-0.63	-0.59	-0.38	-0.34	-0.21	-0.53	-0.42
C10	-0.50	-0.74	-0.24	-0.27	-0.36	-0.34	-0.43
C11	-1.18	-1.17	-0.98	-0.56	0.01	-0.21	-0.72

As shown in Table 8, on average, persons committed from Circuits 15 (Palm Beach), 2 (Gadsden, Leon, Franklin, Jefferson, Wakulla, and Liberty), and 5 (Marion, Lake, Hernando, Sumter, and Citrus) tend to be picked up about a week later than other circuits<sup>11</sup>. By way of comparison, circuits with the highest number of discharges such as Circuits 17 (Broward), 4 (Duval, Clay, and Nassau) and 9 (Orange and Osceola) tend to pick people up near or below the statewide average of 18 days, with Circuit 11 (Dade) having the lowest number of days to pick up individuals at 11 days. Days to pickup is calculated by subtracting the date the individual was transferred from the SMHTF to the county jail from the the date the court report was mailed.

<sup>11</sup> Data is standardized when the observed value is compared to the population mean (arithmetic average) and standard deviation. The mean for days to transfer an individual from a SMHTF to the judicial circuit with jurisdiction was 18 days, with the standard deviation at approximately nine days. For each person discharged from a SMHTF, a standard score (Z-score) is calculated. Z-scores have a mean of zero and a standard deviation of one. For the purposes of this report, values near to zero or negative are ideal as they represent faster transfer times.

Figure 3 shows the overall percent of transfers from a SMHTF to the circuit of jurisdiction by circuit and day range.

**Figure 3. Percent of forensic transfers to circuit of jurisdiction by circuit and day range. (July 1, 2014 through October 31, 2014)**



As illustrated in Figure 3, approximately 26 percent of all transfers for Circuit 15 occur between 1 and 20 days. By way of comparison, approximately 77 percent of all transfers for Circuit 1 and approximately 88 percent of all transfers for Circuit 11 occur within 1 to 20 days, respectively.



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Table 9 shows the arrangements the counties have with the Department regarding transfers between the Department and the county of jurisdiction for circuits 2, 5, 12 and 15.

**Table 9. Transportation arrangements for Circuits 2, 5, 12, and 15.**

COUNTY	CIRCUIT	SHERIFF	U.S. PRISONER TRANSPORT	U.S. CORRECTIONS	DAYS OF TRANSPORT
FRANKLIN	C02	Yes			Will transport on day requested.
GADSDEN	C02	Yes			Will transport on day requested.
JEFFERSON	C02	Yes			Will transport on day requested.
LEON	C02	Yes			Florida State Hospital: Wednesday; North Florida Evaluation and Treatment Center: Thursday
LIBERTY	C02	Yes			Will transport on day requested.
WAKULLA	C02	Yes			Will transport on day requested.
CITRUS	C05	Yes			Will transport on day requested.
HERNANDO	C05	Yes		Yes	Uses transport company for long-distance transports. Negotiates with transport company for transport day.
LAKE	C05	Yes			Will transport on day requested.
MARION	C05	Yes			Will transport on day requested.
SUMTER	C05		Yes		Negotiates with transport company for transport day.
DESOTO	C12	Yes			Will transport on day requested.
MANATEE	C12	Yes			Will transport on day requested.
SARASOTA	C12	Yes			Will transport on day requested.
PALM BEACH	C15	Yes			Will transport on day requested.

Apart from a county established process for transporting individuals from Leon County to a forensic SMHTF and from a SMHTF to Leon county on particular days of the week, the data shown in Table 9 does not suggest any evident barriers to a timely transfer of an individual from a SMHTF to the county of jurisdiction. In general, most counties try to arrange transfers from a SMHTF to the county jail to coincide with a transfer of an individual from a county jail to a SMHTF. As part of the transfer process, fifteen of Florida’s sixty seven counties use a private transportation organization (i.e., U.S. Prisoner Transport or U.S. Corrections). The remaining counties use their County Sherrif for transportation. A review of transportation data does not suggest there are systematic strengths or weaknesses associated with the organization that manages the transportation process. However, the data does suggest that there are differences among the counties in terms of available resources to manage the transportation process.

When an individual is recommended for return to court, the county jail has to have resources available to resume custody of the individual. At a minimum, the jail needs to have an open bed to receive the individual, and when the Sheriff is responsible for transport, the Sheriff needs to have deputies<sup>12</sup> available to conduct the transfer from the SMHTF to the county jail. In some cases, individuals with identified behavioral health concerns, which may or may not include persons previously found ITP, are

<sup>12</sup> County Sheriffs typically send at least two deputies for prisoner transports.

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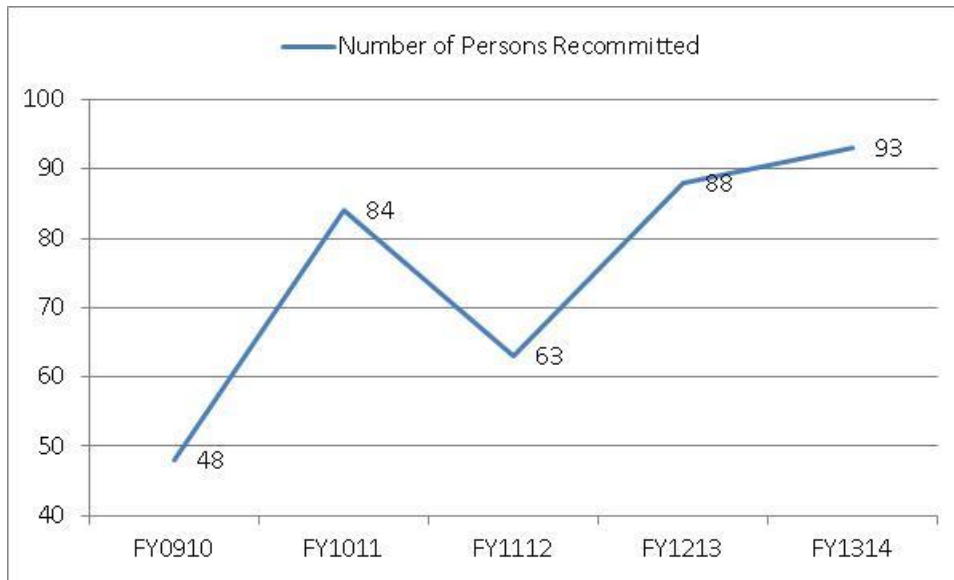
treated on specialty units within a county jail. The county jail may have available beds within the general population of inmates but no available specialty beds. In such cases, the county jail may elect to hold off transferring an individual from a SMHTF until sufficient resources are available to meet the individuals needs. This consideration into the needs of the individual is important as, historically, six percent of all persons discharged as competent to proceed are recommitted to the Department as ITP on the original charges (see Table 10).

**Table 10. Number of Persons Recommitted and Average Days between Discharge and Readmission by Judicial Circuit and Fiscal Year.**

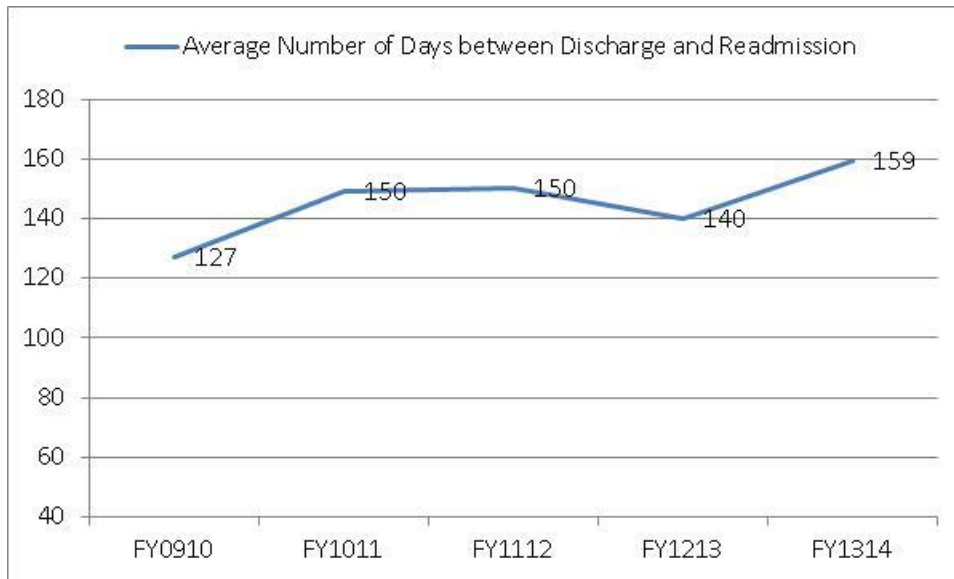
CIRCUIT	NUMBER OF PERSONS RECOMMENDED					AVERAGE DAYS BETWEEN DISCHARGE AND READMISSION					TOTAL NUMBER OF PERSONS RECOMMENDED	OVERALL AVERAGE DAYS BETWEEN DISCHARGE AND READMISSION
	FY0910	FY1011	FY1112	FY1213	FY1314	FY0910	FY1011	FY1112	FY1213	FY1314		
C17	11	14	14	30	25	70	130	161	114	166	94	132
C06	3	13	10	9	6	179	89	163	130	70	41	119
C11	9	9	6	9	7	162	114	167	282	120	40	170
C09	2	4	4	9	8	187	226	123	134	126	27	147
C10	3	5	7	2	7	264	150	150	285	217	24	195
C13	2	3	2	6	10	88	86	256	137	148	23	141
C12	1	5	3	3	6	166	362	215	146	138	18	216
C04	2	8	1	3	3	186	169	145	183	193	17	176
C02	4	3	2	3	2	80	155	52	78	130	14	99
C01	0	6	3	1	3	0	204	91	126	147	13	159
C05	1	3	5	1	2	104	167	113	111	199	12	140
C15	1	3	0	1	5	127	134	0	109	229	10	178
C18	1	1	2	2	3	315	213	66	189	160	9	167
C14	2	3	1	2	0	71	130	49	61	0	8	88
C19	2	1	1	1	2	134	10	455	119	147	7	164
C08	3	1	0	2	1	34	51	0	84	217	7	77
C07	0	0	2	3	2	0	0	91	122	443	7	165
C20	1	2	0	1	1	99	111	0	77	119	5	103
<b>Grand Total</b>	<b>48</b>	<b>84</b>	<b>63</b>	<b>88</b>	<b>93</b>	<b>127</b>	<b>150</b>	<b>150</b>	<b>140</b>	<b>159</b>	<b>376</b>	<b>147</b>

Figures 4 and 5 shows the total number of persons and average days to between discharge and readmission by Fiscal Year

**Figure 4. Number of persons recommitted to a SMHTF by the Court by Fiscal Year**



**Figure 5. Average number of days between a discharge from a SMHTF and readmission to a SMHTF under the original charges.**



On average, individuals recommitted as ITP for the original court case reside in the county jail for approximately 147 days. During that time, the individual may have had their psychiatric medication(s) changed (the SMHTF formula may differ from specific county jails) or the individual may elect, against medical advice, to discontinue their treatment, or the stress associated with incarceration or having to participate in their criminal defense may factor into forensic recidivism. In such cases, the court may

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elect to recommit the individual as ITP which results in the same individual being served more than once. While persons recommitted on the same charge represent a small proportion of the number of persons discharged as ITP, they do represent a duplication of effort and added expense to the state.

An additional factor related to transportation is the timely filing of a court order authorizing transfer from a SMHTF to the county jail. Although objective data is not presently available, anecdotal evidence suggests that the filing of and execution of a transportation order by the court contributes to the time it takes to transfer an individual from a SMHTF to the county jail.

## Discussion

Section 916.107(1)(a), Florida Statutes, requires the Department to take custody of an individual found incompetent to proceed to trial or not guilty by reason of insanity within 15 days after the Department has received a complete commitment packet from the committing court. The Department has observed an increase in the number of persons admitted to a state mental health treatment facility towards the upper range of the 15 day transfer window. Factors associated with the increase in time it takes to transfer an individual to a SMHTF include the following:

- A decrease in secure forensic beds from a high of 1,180 in FY2009-10 to 1,108 in FY2014-15;
- An Increase in the number of commitments per year from a low of 1,489 in FY2010-11 to 1608 in FY2013-2014 (last complete year on record);
- From July 1, 2014 through November 17, 2014, the overall number of commitments is seven percent higher than FY2013-14, and four percent higher than the average number of commitments between FY2009-10 thorough FY2013-14;
- An increase in the average days to restore an individual to trial competency from a low of 92 days in FY2009-10 to 106 days in FY2013-14 (last complete year on record);
- An increase in the average days to return an individual from a SMHTF to their judicial circuit from 17 days in FY2009-10 to 19 days in FY2013-14 (last complete year on record); and
- An increase in the number of persons recommitted on the same charges after being evaluated as competent to proceed and returned to their circuit of jurisdiction from 48 in FY2009-10 to 93 in FY2013-14 (last complete year on record).

The forensic service of the SMHTF system is intended to be an open system whereby sufficient resources are available to meet demand. However, in practice, the system is closed in that the availability of resources (e.g., beds, clinical and rehabilitative staff to resident ratios) is fixed.

Community psychiatry and behavioral health practices have significantly improved the quality of life of persons with behavioral health concerns. By way of example, the Louis de la Parte Florida Mental Health Institute (hereinafter referred to as "FMHI"), reported over 155,741<sup>13</sup> involuntary Baker Act examinations were conducted on 96,313 persons between January 1, 2012 and December 31, 2012. Of the 96,313 persons examined for involuntary civil commitment, one percent (974 of 96,313) was admitted to the civil service of a SMHTF for longer term care. This data suggests that community services are effective in helping persons with behavioral health concerns. Of those persons that require longer term care, it can be said that those individuals presented with clinically significant differences from those who responded well to emergency or crisis services. One way to illustrate this change is to examine an individual's level of functioning on the Department's Functional Assessment Rating Scales

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<sup>13</sup> FMHI submits a Baker Act examination dataset to the department for a period that includes the prior calendar year by the end of the current calendar year (e.g., 2006 through 2013 data will be submitted by December 31, 2014). The file contains basic demographic information on individuals served, including the provider and county of service. The dataset received from FMHI represents all involuntary examinations completed between January 1, 2006 and December 31, 2012.

(hereinafter referred to as “FARS”). The FARS includes 18 items that examine clinical symptoms (e.g., depression, anxiety), comorbid factors (e.g., medical illnesses, substance abuse), socio-cultural factors (e.g., interpersonal relationships, ability to perform activities of daily living) and risk factors (e.g., danger to self or danger to others). Each of the 18 items can be scored on a scale of 1 (no problem) to 9 (significant problem) to arrive at a total score that ranges from 18 to 162. By policy, the FARS is not completed on persons committed as incompetent to proceed as the performance outcome standard for measuring the effectiveness of competency services is length of time to restore an individual to trial competency<sup>14</sup>. However, a FARS is completed on persons committed as NGI or under the Baker Act. Table 11 shows average SMHTF admission FARS scores by fiscal year.

**Table 11. Average admission FARS scores by fiscal year**

FISCAL YEAR	ADMISSION FARS COMPLETED	AVERAGE FARS TOTAL SCORE
FY2009-10	2,412	81
FY2010-11	1,971	82
FY2011-12	2,167	85
FY2012-13	1,662	91
FY2013-14	1,075	99

Admission FARS scores have increased 22 percent from FY2009-10 to FY2013-14. Were FARS completed on persons committed as ITP, it is likely that we would observe a similar increase in scores. This increase suggests that the overall clinical needs of individuals committed to a SMHTF are more complicated than what was observed in years prior. A likely explanation for such a change in clinical presentation is the availability of new generation psychiatric treatment options. The availability of effective psychotropic medications via community services makes it more likely that individuals can be successfully treated in the community. Although the data collected in the existing forensic database does not contain a comprehensive list of charges for all persons committed to DCF under Chapter 916, F.S., a review of 363 persons committed between July 1, 2014 and November 20, 2014 showed that 19 percent (69 of 363) of persons were charged with resisting arrest with violence or battery on a law enforcement officer. It is likely that such persons were experiencing behavioral health concerns prior to arrest and that in the absence of the violent episode the local law enforcement agent would have been able to resolve the crisis situation that resulted in an arrest by transporting the individual to a crisis stabilization unit. It is

<sup>14</sup> The Department has considered using clinical tools like the FARS for persons committed as ITP. However, the present goal for persons committed as ITP is to help them acquire sufficient present capacity to meaningfully participate in their legal defense. Clinical tools like the FARS or the Level of Care Utilization System (hereinafter referred to as “LOCUS”) are used to identify areas of concern that affect an individual’s overall quality of life. For persons committed under the Baker Act, a FARS or LOCUS might help identify barriers associated with an ability to care for oneself. In the case of ITPs, a similar functional deficit might be observed but the course of treatment would not directly address such a concern as the focus is on returning the individual to court. Once a criminal case has been resolved the individual’s needs would likely be followed up on by community providers associated with a Managing Entity. It is for this reason that the Department would not recommend having a FARS or LOCUS completed on ITPs as it would divert clinical services away from competency restoration.

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believed that the SMHTFs are receiving persons that have not had their behavioral health symptoms resolved by the community mental health system. That may be due to a lack of engagement on the part of the individual (e.g., it is not uncommon for persons with psychiatric symptoms to not have insight into their illness). The outcome is that the SMHTF system may be serving a more clinically complicated group of individuals today than have been served in the past. Such would explain the increase in the number of commitments, days to restore an individual to trial competency, overall length of stay and an increase in forensic recidivism.

## Recommendations

The forensic SMHTF system has proactively addressed a concern related to the number of persons admitted to a SMHTF at or near 15 days after being placed on the forensic waiting list. This review was undertaken before any individual exceeded the 15 day limit. To help reverse the trend of persons being admitted from the waitlist at the upper end of the 15 day window, the SMHTF will do the following:

1. Work in partnership with the Department's Office of General Counsel to advise judicial circuits of the importance of working together to improve the forensic mental health system.
  - a. The Office of General Counsel is drafting letters to each judicial circuit advising the Chief Judge of the number of persons awaiting transfer from a SMHTF to a county jail.
  - b. The SMHTF Program Office will send quarterly letters to each judicial circuit. As part of these letters, the Chief Judge will be advised of successes or opportunities for improvement, as well as overall forensic mental health trends.
  - c. The SMHTF Program Office will continue to support the Office of General Counsel by providing updated information for bi-weekly conference calls with regional department counsel.
    - i. These calls help coordinate forensic discharge activities between facilities and regional offices.
2. Following the release of this report, the SMHTF Program Office will publish quarterly reports to ensure that forensic service related information is readily available to the public and stakeholders.
3. The SMHTF Program Office and the Department's Office of Information Technology Services will work together to improve information technology
  - a. SAMH will conduct a feasibility study to identify a suitable electronic health record that can improve communication across all seven SMHTFs, as well as making it easier to share information with forensic liaisons affiliated with Managing Entities.
  - b. SAMH will also develop a web based data entry and reporting system to support the forensic service.
    - i. The forensic application will allow for improved tracking of persons receiving facility based services as well as persons receiving community based services.
    - ii. The updated system will use state standards for capturing offense related information (e.g., FDLE's listing of criminal charges).
  - c. SAMH will develop standardized reports that will be available in real time to all stakeholders involved with the forensic service.
    - i. Part of the system will be readily accessible to the public to show the productivity and effectiveness of the forensic service.
    - ii. With proper "need to know" access rights, service providers will be able to access client level data to help facilitate a strong facility and community forensic partnership.



4. The Department will seek again to receive assistance from the Office of Economic & Demographic Research to determine long term projections on forensic commitments. The Department contacted the Office of Economic & Demographic Research in early 2014 to determine whether one or more of the estimating conferences could provide future commitment projections similar to the estimates the Criminal Justice Estimating Conference provides the Department for the Sexually Violent Predator Program. The Office of Economic & Demographic Research indicated that they would consider providing projections from the Social Service Estimating Conference for the civil service and the Criminal Justice Estimating Conference for the forensic service but would need a formal request from the Executive Office of the Governor or the Legislature to proceed.
5. The Department has submitted a Legislative Budget Request to fund an increase in forensic beds. As of November 17, all four forensic facilities were over 100 percent capacity, with 22 persons listed on the daily census filling beds of persons that have been placed on leave of absence to the county jail while awaiting a determination by the presiding court on matters related to competency to proceed, non-restorability, conditional release or the efficacy of the commitment (response to writ of habeas corpus). The Department requires additional capacity to manage the slow down on discharges with an increase in the commitments, and an increase in the length of time it takes to receive an individual from a county jail.
  - a. Since July 1, 2009, the number of persons transferred from a SMHTF to the county jail within 1 to 10 days has decreased from approximately 28 percent to 15 percent in FY2014-15, while the percent of persons transferred from 11 to over 41 days has increased in kind.
  - b. When combined with the seven percent increase in the total number of commitments, as of November 17 compared with November 17, 2013, the increase in the number of days to transfer someone out of a facility is resulting in an increase in the number of persons on the forensic wait list that are approaching the 15 day statutory limit. Additional beds will help relieve some of the pressure on the forensic system by bringing the system below 100 percent utilization.
6. The Department is exploring options for managing the cases of individuals that have been deemed competent but remain in the Department's custody. As briefly discussed earlier in this report, persons subject to the Rubio decision remain within a SMHTF until such time as their criminal trial is ready to commence. On average, persons subject to the Rubio decision remain in a SMHTF for four additional months. For every one person subject to the Rubio decision, two persons deemed incompetent to proceed could have been admitted and found competent.

7. The Department is proposing several changes to Chapter 916, F.S. One proposal would establish a timeframe for individuals to be seen in a circuit court when the court receives a report from the state mental health treatment facility indicating that an individual's competency has been restored or that the individual no longer meets commitment criteria. A "status" hearing would be required within 30 days of receiving a report. This will align Chapter 916, F.S. with the same provision found in Rule 3.212(c)(6) and Rule 3.218(b), Florida Rules of Criminal Procedure. The proposed bill language will ensure that individuals who have reached maximum benefit from treatment in a state mental health treatment facility are promptly returned to the court system for a hearing to address their legal charges. It will free up capacity for others waiting in jail for admission to a state mental health treatment facility.
8. The Department will work with our community partners to determine whether persons admitted to a SMHTF under Chapter 916, F.S., represent a more clinically complex group when compared to individuals deemed incompetent to proceed that are not found to require involuntary commitment.

### Appendix A - Forensic Mental Health Flowchart

