

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 183 Misdemeanor Pretrial Substance Abuse Programs

**SPONSOR(S):** Criminal Justice Subcommittee, Moraitis and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 186

| REFERENCE                              | ACTION           | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|-----------|--|
| 1) Criminal Justice Subcommittee       | 14 Y, 0 N, As CS | Williams  | Cunningham                               |
| 2) Justice Appropriations Subcommittee | 13 Y, 1 N        | McAuliffe | Jones Darity                             |
| 3) Judiciary Committee                 |                  |           |  |

### SUMMARY ANALYSIS

Currently, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not been previously convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the list of persons eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program to include persons who have not previously been convicted of a felony and who have been charged with:

- A nonviolent, nontraffic-related misdemeanor and who have been identified as having a substance abuse problem;
- A misdemeanor for prostitution under s. 796.07, F.S.;
- A misdemeanor for possession of alcohol while under the age of 21 under s. 562.111, F.S.; or
- A misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(1), F.S.

The bill also expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

The bill may have a fiscal impact on local governments. Persons who successfully complete such programs may have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate, which would be a negative impact. The bill has no expected fiscal impact to the state.

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Pretrial diversion has been described by the National Association of Pretrial Services Agencies as a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan, results in a dismissal of the charge.<sup>1</sup> The purpose of a pretrial diversion/intervention program is to enhance justice and public safety through addressing the root cause of the arrest-provoking behaviors of the defendant, reduce the stigma which accompanies a record of conviction, restore victims and assist with the conservation of court and criminal justice resources.<sup>2</sup>

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,<sup>3</sup> and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,<sup>4</sup> for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.<sup>5</sup>

Participants in the program are subject to a coordinated strategy<sup>6</sup> developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.<sup>7</sup>

At the end of the pretrial intervention period, the court is required to consider the recommendation of the treatment program and the recommendation of the state attorney as to disposition of the pending charges.<sup>8</sup> The court must determine, by written finding, whether the defendant successfully completed the pretrial intervention program.<sup>9</sup> If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.<sup>10</sup> The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.<sup>11</sup>

##### **Effect of the Bill**

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not been previously

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<sup>1</sup> Performance Standards and Goals for Pretrial Diversion/Intervention National Association of Pretrial Services Agencies November 2008. [http://www.napsa.org/publications/diversion\\_intervention\\_standards\\_2008.pdf](http://www.napsa.org/publications/diversion_intervention_standards_2008.pdf) (last visited on October 10, 2011).

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

<sup>3</sup> Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act.

<sup>4</sup> Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and sets criteria for such programs.

<sup>5</sup> Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program. Section 948.16(1)(a), F.S.

<sup>6</sup> The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Section 948.16(1)(b), F.S.

<sup>7</sup> Section 948.16(1)(b), F.S.

<sup>8</sup> Section 948.16(2), F.S.

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the list of persons eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program to include persons who have not previously been convicted of a felony and who have been charged with:

- A nonviolent, nontraffic-related misdemeanor and who have been identified as having a substance abuse problem;
- A misdemeanor for prostitution under s. 796.07, F.S.;<sup>12</sup>
- A misdemeanor for possession of alcohol while under the age of 21 under s. 562.111, F.S.;<sup>13</sup> or
- A misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(1), F.S.<sup>14</sup>

The bill also expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

Section 2. Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

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<sup>12</sup> “Prostitution” means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. Section 796.07, F.S.

<sup>13</sup> Section 562.111, F.S., prohibits the possession of alcohol by a person under the age of 21. Any person under the age of 21 who commits the first offense of the possession of alcohol is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083, F.S. Any person under the age of 21 who commits a second offense of possession of alcohol is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 and s. 775.083, F.S.

<sup>14</sup> Section 499.03, F.S., makes the possession of any habit-forming, toxic, harmful, or new drug subject to s. 499.003(33), or prescription drug as defined in s. 499.003(43), a second degree misdemeanor, unless the possession of the drug has been obtained by a valid prescription. These drugs include “new drugs” (s. 499.003(33), F.S.), prescription drugs (s. 499.003(43), F.S.), medicinal drugs (s. 465.003(8), F.S.), misbranded drugs (s. 499.007(13), F.S.), compressed medical gas (s. 499.003(11), F.S.), prescription medical oxygen (s. 499.003(46), F.S.) and veterinary prescription drugs (s. 499.003(53), F.S.).

The bill expands the list of persons eligible to participate in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs. This may have a positive fiscal impact on local governments because persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate, which would be a negative impact. The bill has no expected fiscal impact to the state.

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

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. There may be a positive fiscal impact on treatment providers if more people are eligible to participate in such programs.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On October 18, 2011, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarifies that those eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program must have not previously been convicted of a felony. The amendment also corrects a statutory citation relating to the "possession of a control substance without a valid prescription" offense.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.