SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 60

SPONSOR: Committee on Criminal Justice, Senators Brown-Waite and Laurent

SUBJECT: Pretrial Intervention Programs

DATE: December 1, 1998 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrow	Cannon	CJ	Favorable/CS
2.			FP	
3.				
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 60 would allow a court to deny the placement of a defendant into a pretrial substance abuse education and treatment intervention program if at any time the defendant had previously refused an offer to be placed in such program when charged with a qualifying drug offense.

This CS substantially amends the following section of the Florida Statutes: 948.08.

II. Present Situation:

Pretrial intervention (PTI) programs are diversionary programs in the criminal justice system. Placement in such a program can occur either before or after a formal criminal charging document is filed by the state attorney. Pretrial intervention programs are utilized to divert certain offenders from "traditional" prosecution where it is offender-appropriate and authorized by statute.

Pretrial intervention programs vary as to their focus of offense-type eligibility, conditions of participation, and lengths of time. More general programs may be simply established as agreements or "contracts" between the defendant and the state, along with the court, to comply with certain conditions for a finite period of time. However, other programs may be very comprehensive with educational, treatment, and counseling components, such as drug courts. Pretrial substance abuse education and treatment intervention programs, or "drug courts," are established by judicial order that approves the program, which is issued by the chief judge of the judicial circuit wherein the program is established. Drug-court PTI programs may be operated by personnel of the county, a contracting private entity, or the courts. They may be funded by various means as well: federal, state, local, offender fee, and non-profit sources.

Section 948.08 (6), F.S., sets out criteria and standards for participation in and operation of pretrial substance abuse education and treatment intervention programs. A person who has not been previously convicted of a felony and has not has been admitted to a pretrial program under s.

948.08, F.S., and is charged with a second or third-degree felony for purchase of or possession of a controlled substance under chapter 893, is eligible for placement into a drug-court PTI program. Placement into a drug court program may be upon the motion of the defense, prosecution, or the court, according to s. 948.08 (6) (a), F.S. However, if the state attorney believes that the facts and circumstances of the case suggest that the defendant was involved in the dealing or selling of controlled substances, the court must hold a program pre-admission hearing. If it is established by a preponderance of the evidence that the defendant was involved in dealing or selling of controlled substances, the court must deny that defendant's admission into the drug-court PTI program.

Placement into a drug court program must be for at least one year. Generally, if an offender is released to a PTI program, the court cannot appoint a public defender to represent that offender. An indigent offender is only entitled to legal representation if the offender's placement in such a program is revoked and the offender is subject to imprisonment if convicted of the criminal offense.

Prior to placement in any PTI program, an offender must also waive his or her right to a speedy trial for the period of his or her diversion from trial in such a program. During participation of an offender in a PTI program, the offender's criminal case remains pending by "continuing" the case without final disposition. However, criminal prosecution may be resumed at any time the program administrator or the state attorney determine the offender is not fulfilling his or her obligations under the pretrial intervention plan/agreement or that public interest requires resumption of criminal prosecution.

At the end of a pretrial intervention period, the program administrator and the state attorney make recommendations to the court as to the disposition of the pending charges of which the court must consider. In a pretrial substance abuse education and treatment intervention program, or a drug court program, subsection (6) of s. 948.08, F.S., sets out several alternatives as to the authorized dispositions that may occur. First, the court determines, by written finding, whether the defendant has successfully completed the pretrial intervention program. If the court finds that the defendant did not successfully complete the program, the court can order the defendant to continue in education and treatment. In these instances, the court may also order that the criminal charges be resumed and pursued through the traditional channels of prosecution. The court must, however, dismiss the criminal charges if it finds that the defendant has successfully completed the pretrial substance abuse education and treatment intervention program.

It has been reported by prosecutors that in some jurisdictions with drug courts, particularly in Polk County, there has been a recurring problem of rejection of program placement by offenders who qualify for such programs. These offenders then have a public defender appointed to them and they go through the traditional process of criminal prosecution, which depletes the time of the assistant public defender, assistant state attorney, the judges, and court personnel involved in the case. Once many of these offenders have pressed his or her case all the way to trial, the offenders finally choose to go into the drug court program. Some courts have determined that an offender may be admitted to the drug court program at any time prior to final disposition of the criminal case. Yet, by allowing defendants to exercise this choice without parameters, the original intent and goals behind the creation of PTI programs, such as avoiding the higher costs of traditional prosecution, may be contravened.

III. Effect of Proposed Changes:

Subsection (6) of s. 948.08, F.S., would be amended to allow a court to deny a defendant from being placed in a pretrial substance abuse education and treatment intervention program if the condition precedent exists that the defendant had previously rejected an offer to be placed in such a program. The authority is permissive only and would not be mandatory. Therefore, there may be instances in which an offender previously rejected placement in such a program for certain reasons that later are deemed reasonable by the court that would warrant allowing the offender subsequent admission into a drug-court PTI program after his or her previous rejection.

The effect of this language would impact those jurisdictions that have drug courts and where abuses by offenders of this traditional prosecution alternative have reportedly been prevalent. This language would allow the court to deny defendants' admission to drug court programs once they have turned down such offers, which then requires the court system to move toward a trial with much time and money involved in traditional criminal prosecution. Time of assistant public defenders, assistant state attorneys, judges, and other court personnel could then be utilized on other criminal cases if judges are allowed to deny admission of defendants to such programs if they had previously rejected offers for drug-court PTI placement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is likely to be a positive fiscal impact as a result of this CS; however, the positive fiscal impact is indeterminate. Resources in the court system are likely to be refocused or shifted because the language of this CS would thwart situations that have been known to occur where a defendant has later changed his or her mind about placement in such a program. In some drug court programs, defendants who qualify for placement in such a program are deemed to have the ability to consent to participation in the program at any time during the process. This power to first reject and later secure placement in a drug-court PTI program that is afforded to defendants is reportedly a particular problem in Polk County. In that judicial circuit, defendants apparently deny the offer of drug court diversion and opt to go to trial on the case, but later change their mind once the seriousness of their actions is appreciated by the defendants. There is substantial court and prosecutor time, as well as public defender time, involved in the traditional prosecution after rejection of offers for drug court placement. The costs can continue to escalate and be quite substantial if a defendant presses traditional prosecution all the way to the day of trial before deciding to take advantage of a drug court program.

Thus, by establishing reasonable parameters by giving authority to the court to deny placement of an offender into a pretrial substance abuse education and treatment intervention program after an offender has previously rejected an offer to go through such a program, more offenders may not engage in the practice of waiting until the last minute to take advantage of such an offer. Thereby, time and costs would not be unnecessarily expended within the criminal court system on such cases and can be focused on other criminal cases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

When defendants are afforded the opportunity to repeatedly accept or reject the offer of admission to a pretrial substance abuse education and treatment intervention program, it is difficult for the court system to realize any financial or workload benefits of a pretrial intervention program. When defendants can “test” the system or explore the evidence in his or her case by turning down an offer for such a program until the beginning of trial of after the commencement of a trial, it can be argued that not only is money and court time not saved by such defendant behavior, but it can be argued that more money and time of all persons involved are utilized.

It should be noted that the effects of this CS may not be entirely popular with the defense bar. By providing permission for the court to deny admission in drug-court PTI programs *after* a defendant had refused such placement, it removes the advantage of what may be a tactical stratagem that may have been previously employed by defense counsel. Thoughtful decision to submit to a drug court program will have to be made at the time it is offered to the defendant because of the risk that future placement may be an impossibility.

VIII. Amendments:

None.