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DATE: March 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: PCS/HB 199
RELATING TO: Drug Courts
SPONSOR(S): Committee on Judicial Oversight and Representative Trovillion
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) CRIME PREVENTION, CORRECTIONS, & SAFETY
 - (3) FISCAL POLICY AND RESOURCES
 - (4) COUNCIL FOR SMARTER GOVERNMENT
 - (5)
-

I. SUMMARY:

The bill establishes a treatment-based drug court program in each judicial circuit in Florida. Treatment-based drug courts attempt to integrate judicial supervision, treatment, accountability, and sanctions to reduce recidivism in drug-related crimes. The bill states the legislative intent that public agencies and private entities shall work together to implement the drug court program. The bill requires each judicial circuit to establish a drug court program and appoint a drug court coordinator. The drug court coordinator provides support in the form of program coordination between the drug court and the various entities involved in the drug court process.

The bill establishes a voluntary Florida Association of Drug Court Professionals. The association is required to submit a yearly report on drug court issues to the Florida Supreme Court Treatment-Based Drug Court Steering Committee.

The bill amends section 910.035, Florida Statutes, and permits defendants to have certain drug court cases transferred from one county or circuit to another county or circuit.

The bill creates section 948.16, Florida Statutes, which provides for a pretrial intervention program for certain misdemeanor drug offenses.

The fiscal impact of the bill is indeterminate.

The bill will take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article V of the Florida Constitution creates the state court system. Circuit courts and county courts handle criminal cases at the trial level. See Art. V, §§ 5, 6, Fla. Const. Courts may sit in divisions as established by general law. See Art. V, § 7, Fla. Const.

The Florida Supreme Court's website continued the following about the drug court system in Florida:

Florida started the drug court movement by creating the first treatment-based drug court in the nation in 1989. The drug court concept was developed in Dade County (Miami, Florida) stemming from a federal mandate to reduce the inmate population or suffer the loss of federal funding. The Supreme Court of Florida recognized the severity of the situation and directed Judge Herbert Klein to research the problem. Judge Klein determined that a large majority of criminal inmates had been incarcerated because of drug charges and were revolving back through the criminal justice system because of underlying problems of drug addiction. It was decided that the delivery of treatment services needed to be coupled with the criminal justice system and the need for strong judicial leadership and partnerships to bring treatment services and the criminal justice system together. Ultimately, the model for treatment-based drug courts was born.

As of September 1999, Florida has 21 operational and six planned adult drug courts, 11 operational and two planned juvenile drug court, and three operational dependency drug courts.

Source: www.flcourts.org (downloaded February 16, 2001).

The Florida Supreme Court has established a Treatment-Based Drug Court Steering Committee to assist the executive and legislative branches in establishing a state policy to address substance abuse issues in Florida.

In circuits or counties that do not have a drug court program, drug cases are heard by the appropriate circuit or county court.

Section 948.08, Florida Statutes, requires the Department of Corrections to supervise pretrial intervention programs. Under the statute, defendants with minimal prior records who are charged

with certain misdemeanors or third degree felonies can agree to participate in pretrial intervention programs. If a defendant agrees to participate (and waives his or her right to a speedy trial), the defendant is placed in the program. If the defendant successfully completes the program, pending charges can be dismissed. Section 985.306, Florida Statutes, creates an analogous pretrial intervention program in the juvenile system.

Section 948.08(6), Florida Statutes, allows defendants charged with certain drug possession felonies to be admitted into pretrial intervention programs if the defendant has not previously been convicted of a felony and has not previously been referred to pretrial intervention. If the state attorney establishes, by a preponderance of the evidence, that the defendant was involved in dealing or selling of drugs, the court must deny admission into the pretrial intervention program. If the defendant successfully completes the program, the case is dismissed. If the defendant does not complete the program, the prosecution proceeds. There is currently no analogous statute for misdemeanor drug crimes.

Article 1, section 16, of the Florida Constitution gives persons charged with crimes the right to be tried in the county where the crime occurred. Pursuant to section 910.035, Florida Statutes, criminal defendants can waive the right to a trial in the county where the crime occurred and enter a plea of guilty or nolo contendere and consent to disposition in another county.

C. EFFECT OF PROPOSED CHANGES:

The bill establishes a drug court program in each judicial circuit. The purpose of the drug court program is to ensure that persons in the justice system with a substance abuse problem will be processed in such a manner as to address the substance abuse problem through appropriate treatment.

The bill establishes essential elements of the drug court program. These standards conform to the standards recognized by the Drug Court Program Office of the United States Justice Department. These elements require drug courts to integrate alcohol and other drug treatment services with justice system case processing, to identify eligible participants in the drug court program early so they can be promptly placed in a program, to provide access to drug and alcohol treatment and rehabilitation services, to monitor abstinence by frequent testing, and to monitor participants' compliance.

The bill establishes the position of drug court coordinator for each drug court in each judicial circuit. The drug court coordinator is responsible for coordinating the responsibilities between participating agencies and service providers.

The bill permits the drug courts to include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.306, F.S. This would permit drug courts to use the pretrial intervention programs created by those statutes as part of the drug court program.

The bill creates the Florida Association of Drug Court Practitioners. The association's membership will consist of drug court practitioners including judges, state attorneys, defense attorneys, drug court coordinators, probation officers, law enforcement officials, and treatment professionals. Membership in the association is voluntary. The bill requires the association to elect a chair, solicit recommendations from members on issues relating to drug courts, and submit a yearly report to the Supreme Court Treatment-Based Drug Court Steering Committee.

The bill contains a legislative intent section about the drug court program. The intent is to reduce crime and recidivism by "breaking the cycle of addiction." The bill states that the Legislature "seeks to ensure that there is a coordinated, integrated, and multidisciplinary response to the substance

abuse problem in this state.” The Legislature encourages various state agencies to work with law enforcement, local governments, and private sources to support the creation of the drug court program.

Section 2 of the bill permits a defendant who is eligible for the drug court program pursuant to section 948.08(6) have his or her case transferred to another county if the sending county and the accepting county agree to the transfer. If the transfer is approved, the trial court of the transferring county shall enter an order directing the transfer. The order shall include a copy of the probable cause affidavit, any charging documents in the case, all reports, witness statements, test results, evidence lists, and other documents. The order shall also include the defendant’s written consent to abide by the drug court rules of the receiving county and the defendant’s mailing address and phone number.

Once the transfer is complete, the clerk of the receiving county shall set the matter for hearing in the receiving county’s drug court. The receiving jurisdiction shall dispose of the case pursuant to section 948.06. If the defendant fails to complete the drug court program, the case shall be prosecuted as determined by the state attorneys of the sending and receiving counties.

Section 3 of the bill amends section 948.08(6)(a), Florida Statutes, to add tampering with evidence,¹ solicitation for purchase, or obtaining a prescription by fraud to the group of crimes which makes a defendant eligible for pretrial intervention under section 948.08(6). These crimes are often related to a substance abuse problem.

Section 4 of the bill creates section 948.16, Florida Statutes. The statute provides that a person charged with a misdemeanor drug possession offense who has not been previously convicted of a felony or admitted to a pretrial program is eligible for a pretrial substance abuse intervention and treatment program. This section is analogous to the pretrial program for felony offenders created in section 948.08, Florida Statutes. A defendant may be placed in pretrial intervention upon motion of either party or the court. If the state attorney objects to pretrial intervention and can establish by a preponderance of the evidence that the defendant was involved in selling illegal drugs, the trial court must deny the defendant’s admission into the pretrial intervention program.

At the end of the pretrial intervention period, the court shall determine whether the defendant successfully completed the program. If the defendant successfully completes the pretrial intervention program, the charges against the defendant are dismissed. If the defendant does not successfully complete the program, the court may continue the program or return the case to the criminal docket.

Any public or private entity providing pretrial intervention services shall contract with the county or appropriate governmental entity pursuant to section 948.15(3), Florida Statutes. That section requires the entity to provide specified information about its program, staffing levels, its procedure for collecting fees and restitution, and other information. The contract must be approved by the chief judge.

Section 5 of the bill provides that it shall be effective upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

¹ Prohibits tampering with or destruction of evidence when a party knows that a criminal investigation or judicial proceeding is under way. See s. 918.13, F.S.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate. The bill requires a drug court coordinator in each judicial circuit. If that position is a full time position, it will have to be funded. There may be costs incurred if the drug court program leads to more persons in pretrial intervention programs. Such costs might be offset if the programs are successful and fewer persons are sent to prison.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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