

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1662  
 SPONSOR: Senator Burt  
 SUBJECT: Substance Abuse Treatment and Intervention  
 DATE: February 18, 2002      REVISED: 02/26/02 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/ 1 Amendment</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>AHS</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

SB 1662 allows the court, at the shelter hearing or adjudicatory hearing, to order a substance abuse assessment if the mental or physical condition of a child or the child’s parent, caregiver, legal custodian, or other person requesting custody of the child is in controversy. The court may require persons to participate in substance abuse treatment services when it is appropriate and services are available, including participation and compliance with a treatment-based drug court program.

The bill specifies that with the approval of the state attorney, a defendant (child or adult) assessed with a substance abuse problem who is charged for the first time with a nonviolent third-degree felony or who has previously been convicted of a nonviolent third-degree felony and is charged with a second or subsequent nonviolent third-degree felony may be referred to a pretrial substance abuse education and treatment intervention program. Upon completion of the program the defendant is entitled to dismissal of the pending charge involving a nonviolent third-degree felony.

The bill states that based upon an annual appropriation, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program within the state court system to coordinate the responsibilities of the participating agencies and service providers.

This bill substantially amends sections 39.001, 39.402, 39.407, 39.507, 39.521, 39.701, 397.334, 948.08, and 985.306, of the Florida Statutes.

## II. Present Situation:

There is no requirement in ch. 39, F.S., for a child or the child's parent, caregiver, legal custodian, or other person requesting custody of the child to be evaluated for substance abuse problems. However, the National Drug Court Institute and a growing amount of the professional literature report that there is a significant link between child maltreatment and substance abuse. Recent studies suggest that 80 percent of substantiated child abuse cases involve parents who are involved with alcohol or other drugs. The Family Safety Program Office in the Department of Children and Family Services estimates that in 1999, 52 percent of the protective supervision cases required substance abuse treatment in the case plan for one or more caregivers, but only 47 percent of these cases documented participation in treatment.

In April, 1999, the Department of Health and Human Services' report to Congress highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care. It stated that children in substance abusing households: 1) were more likely than others to be served in foster care (54 percent in foster care versus 23 percent in non-substance abusing cases); 2) spent longer periods of time in foster care than other children (median 11 months versus 5 months for others in foster care); and 3) were less likely to have left foster care within a year (55 percent versus 70 percent).

Chapter 2001-48, L.O.F., created s. 397.334, F.S., that established a treatment-based drug court program in each judicial circuit in Florida. Treatment-based drug court programs attempt to integrate judicial supervision, treatment, accountability, and sanctions to reduce recidivism in drug-related crimes. Each judicial circuit was directed to establish a drug court program. The program may be established in misdemeanor, felony, family, or other court divisions. The legislation stated that it is the intent of the Legislature to encourage other state agencies to support the creation and establishment of the drug court programs.

Section 948.08(6), F.S., 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.

Chapter 2001-48, L.O.F., amended s. 948.08(6)(a), F.S., to add tampering with evidence, solicitation for purchase, or obtaining a prescription by fraud to the group of crimes which makes an adult defendant eligible for pretrial intervention. These crimes are often related to a substance abuse problem.

Section 985.306, F.S., contains provisions for a pretrial intervention program in the juvenile justice system. A child who is charged under ch. 893, F.S., with a felony of the second or third degree for purchase or possession of a controlled substance and who has not previously been adjudicated for a felony nor been admitted to a delinquency pretrial intervention program is eligible for admission into a delinquency pretrial substance abuse education and treatment

intervention program for no less than 1 year when approved by the chief judge or alternative sanctions coordinator of the circuit to the extent that funds are available.

### **III. Effect of Proposed Changes:**

SB 1662 amends s. 39.001, F.S., to recognize that substance abuse is a primary cause of child abuse and neglect and that early referral and comprehensive treatment are cost effective and can help combat substance abuse problems in families. The bill also recognizes that treatment-based drug court programs that integrate judicial supervision, treatment, accountability, sanctions, and community support greatly increase the effectiveness of substance abuse treatment and reduce the number of cases of child abuse and neglect. The bill specifies goals identified by the family safety program and the substance abuse program within the Department of Children and Family Services (department) such as ensuring safety of children, preventing and remediating the consequences of substance abuse on families involved in protective supervision or foster care, and supporting families in recovery.

The bill states that children and parents should be evaluated for substance abuse problems early in the assessment process and that participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication of dependency.

The bill amends s. 39.402, F.S., to specify that the court may order the person to submit to a substance abuse assessment at the shelter hearing if the mental or physical condition of a child or his or her parents, caregiver, legal custodian, or the person requesting custody of the child is in controversy. The assessment must be conducted by a qualified professional as defined in s. 397.311, F.S.

The bill amends s. 39.507, F.S., to specify that at the adjudicatory hearing for dependency, the court may require persons to participate in substance abuse treatment services when it is appropriate and services are available, including participation and compliance with a treatment-based drug court program. The bill states that the court including the treatment-based drug court program shall oversee the progress and compliance with treatment by the child or the child's parents, legal custodian, caregiver, or other persons requesting custody of the child and shall impose appropriate available sanctions for noncompliance.

Section 39.701, F.S., is amended to allow the court to extend the time limitation of the case plan or modify the terms of the plan which may include a requirement that the parent, foster parent, or legal custodian participate in treatment-based drug court programs.

Section 397.334, F.S., is amended to add the Department of Education to the local agencies that the Legislature encourages to support treatment-based drug courts. The bill specifies that treatment-based drug court programs may include postadjudicatory programs. Supervision may be provided for offenders who transfer from jail or a prison-based treatment program into the community.

The bill states that contingent upon an annual appropriation, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program within the state court system to coordinate the responsibilities of the participating agencies and service providers.

The bill amends s. 948.08, F.S., to allow a defendant assessed with a substance abuse problem who is charged for the first time with a nonviolent third-degree felony and a defendant assessed with a substance abuse problem who has previously been convicted of a nonviolent third-degree felony to be referred to a pretrial substance abuse education and treatment intervention program with the approval of the state attorney. Upon completion of the program the defendant is entitled to dismissal of the pending charge involving a nonviolent third-degree felony. The bill removes the statutory provision that would not allow a defendant to enter a pretrial substance abuse education and treatment program if, previously, he or she had rejected the offer, on record, to enter the program.

The bill amends s. 985.306, F.S., to state that a child who is charged with a misdemeanor; a felony of the second or third degree for purchase or possession of a controlled substance under ch. 893 F.S.; tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud and who has not previously been adjudicated for a felony is eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

#### **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:

This bill would have a fiscal impact on children and their families with private health insurance who are in the child protection system and for whom the court orders substance abuse assessment and treatment services.

**C. Government Sector Impact:**

There will be additional costs to the department for substance abuse assessments and treatment services for the children and their families needing those services who are either in shelter care or have been adjudicated dependent. The department cannot estimate the full fiscal impact of substance abuse assessment and treatment services for those children and their families in the child protection system who need them and are not currently receiving services. According to the Substance Abuse Program Office in the department, the average cost per child for an assessment is between \$300 to \$500 and the average annual treatment cost per child is \$3,000.

The Office of the State Courts Administrator reports that SB 1662 would cost \$145,231 (if funded by the Legislature) to establish one FTE in each of the two judicial circuits (Third and Sixth Judicial Circuits) currently without a drug court coordinator position for FY 2002-2003. Also, the Office of the State Courts Administrator states that there may be a fiscal impact for judicial circuits wishing to expand their current programs or focus on other areas such as dependency and delinquency.

The Department of Juvenile Justice reports that no data are available to determine which offenses might be related to the new criteria established in the bill (a child who is charged with a misdemeanor; a felony of the second or third degree for purchase or possession of a controlled substance under ch. 893 F.S; tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud and who has not previously been adjudicated for a felony) for admission into a delinquency pretrial substance abuse education and treatment intervention program. Also, no information is available on how successful these placements would be to determine if the drug treatment and education program would delay rather than avoid the costs of a placement in a juvenile justice commitment program. The Department of Juvenile Justice reports that 33 percent of all youth on supervision, including conditional release youth, reoffend after completion of their program.

Based on the Office of Economic and Demographic Research's forecast of the number of persons committing crimes specified in sections 8 and 9 of SB 1662, the bill would have a minimal fiscal impact on the pretrial intervention programs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Children and Families:

Makes a technical correction by removing the word “Program” from the Florida Association of Drug Court Professionals in s. 397.334(6), F.S.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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