

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

Although the bill empowers families by providing meaningful opportunities for substance abusers to avail themselves of treatment, provisions of the bill which allow the court to compel a substance abuser into treatment or face sanctions do not support the principles of individual freedom or personal responsibility.

B. EFFECT OF PROPOSED CHANGES:

Pretrial Intervention

Section 948.08, F.S., 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, F.S., creates an analogous pretrial intervention program in the juvenile system.

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. There is currently no analogous statute for misdemeanor drug crimes.

Criminal Drug Courts

Article V of the Florida Constitution creates the state court system. Circuit courts and county courts handle criminal cases at the trial level¹. Courts may sit in divisions as established by general law.² 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. The first treatment-based drug court in the nation was established in Dade County in 1989. During the 2000-2001 Session, the Florida Legislature

¹ See Art. V, ss. 5 and 6, Fla. Const.

² See Art. V, sec. 7, Fla. Const.

established a drug court program in each judicial circuit.³ The purpose of the drug court program is to ensure that persons in the justice system with a substance-abuse problem are processed in a manner that addresses the substance abuse problem through appropriate treatment. The intent of the Legislature in passing the bill was to reduce crime and recidivism by “breaking the cycle of addiction.” The bill also stated that the Legislature “seeks to ensure that there is a coordinated, integrated, and multidisciplinary response to the substance-abuse problem in this state.” The legislation encouraged various state agencies to work with law enforcement, local governments, and private sources to support the creation of the drug court program. Essential elements of the drug court program are now described in statute, conforming 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, in order to:

- Identify eligible participants in the drug court program early so they can be promptly placed in a program.
- Provide access to drug and alcohol treatment and rehabilitation services.
- Monitor abstinence by frequent testing.
- Monitor participants’ compliance.

The legislation allowed drug courts to make use of the pretrial intervention programs provided in ss. 948.08, 948.16, and 985.306, F.S. Section 948.16, F.S., 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 provision is analogous to the pretrial program for felony offenders created in section 948.08, F.S. 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. While participating in the drug court program, offenders typically have more contacts with the court and closer supervision than offenders in other types of community-based supervision programs. 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.

The bill also created the Florida Association of Drug Court Practitioners. The association’s membership consists of drug court practitioners including judges, state attorneys, defense attorneys, 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.

Currently, Florida has 38 operational and three planned adult drug courts, 21 operational and three planned juvenile drug courts, 12 operational and four planned dependency drug courts, and two reentry drug court programs.⁴ In circuits or counties that do not have a drug court program, the appropriate circuit or county court hears drug cases.

³ See 2000-48, L.O.F. (CS/HB 199).

⁴ See *Treatment-Based Drug Courts in Florida*, December 9, 2002, Office of State Court Administration.

National Center on Addiction and Substance Abuse at Columbia University

In January 1999, the National Center on Addiction and Substance Abuse (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.⁵ CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly \$10 billion in federal, state, and local spending – exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.⁶

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997.⁷ In connection with the report, CASA conducted a national survey of family court and child welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases.⁸ The survey revealed the following:⁹

- 71.6% of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.¹⁰
- 79.6% of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while 39.7% stated that substance abuse was a factor in over 75% of cases.
- 81.6% of respondents reported that parents who abuse or neglect their children most commonly abuse a combination of alcohol and drugs.
- 75.7% of respondents believed that children of substance-abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42% of all caseworkers surveyed reported that they were either not required or not sure if they were required to report substance abuse when investigating child abuse and neglect cases.
- 61% of respondents believed that what treatment was “available” largely determined what treatment was “appropriate” for the parent.
- 85.8% of respondents named lack of motivation as the primary barrier to getting parents into substance-abuse treatment.

The CASA analysis cited substantial research, which documented a foundation for these beliefs. Children whose parents abuse drugs and alcohol are almost three times more likely to be abused than children of parents who are not substance abusers.¹¹ Children of substance-abusing parents are more than four times as likely to be neglected as those of parents who are not substance abusers¹². The rate of repeated abuse or neglect appears to be increasingly driven by alcohol and drug addiction.¹³ Children who grow up in abusive or neglectful environments are at risk for

⁵ No Safe Haven: Children of Substance-Abusing Parents,” January 1999 (hereinafter, CASA Report). See <http://www.casalibrary.org/CASA%20Publications/NoSafeHaven.pdf>

⁶ See *id.*, p. 4.

⁷ See *id.*, p. 1 (internal citations omitted).

⁸ See *id.*, p. 2.

⁹ See *id.*

¹⁰ Respondents also cited better reporting of child maltreatment and poverty.

¹¹ Kelleher, K., Chaffin, M., Hollenberg, J., & Fischer, E. (1994). Alcohol and drug disorders among physically abusive and neglectful parents in a community-based sample. *American Journal of Public Health*, 84(10), 1586-1590.

¹² *Id.*

¹³ Wolock, I., & Magura, S. (1996). Parental substance abuse as a predictor of child maltreatment re-reports. *Child Abuse and Neglect*, 20 (12), 1183-1193; Festinger, T. (1994). *Returning to care: Discharge and reentry in foster care*. Washington, DC: Child Welfare League of America; Murphy, J. M., Jellinek, M., Quinn, D., Smith, G., Poitras, F. G., & Goshko, M. (1991). Substance abuse and serious child mistreatment: Prevalence, risk and outcome in a court sample. *Child Abuse and Neglect*, 15(3), 197-211; National Center on Child Abuse and Neglect. (1993). *Study of child maltreatment in alcohol abusing families: A report to Congress 1993*. Washington DC: U.S.

developing their own substance-abuse problems, performing poorly in school, engaging in delinquent behavior, and repeating the cycle of abuse and neglect.¹⁴

Chapter 39 – Proceedings Relating to Children, Family Courts

Section 39.001, F.S., describes the purposes and intent of Chapter 39, which provides for dependency proceedings. With regard to substance-abuse services, the Legislature has found that the state's dependency system must be able to provide appropriate intervention and treatment for children with personal or family-related substance-abuse problems.¹⁵ A dependent child is defined as a child who is found by the court:

- (a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;
- (b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- (c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- (d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- (e) To have no parent or legal custodians capable of providing supervision and care; or
- (f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.¹⁶

With a substantial body of research documenting the link between substance-abusing parents and children at-risk for dependency, many family court judges have looked to the successes of the criminal drug court program and have endeavored to model a similar program for dependency proceedings.¹⁷ Notable among these efforts is the family drug court program established in 1996 by Judge John Parnham of the First Judicial Circuit in Pensacola. Up to 90 percent of the child welfare cases in Pensacola were reported to involve drug and alcohol abuse.¹⁸

Section 39.601, F.S., describes the requirements for a case plan, which the Department of Children and Families (DCF) must develop for each child receiving services pursuant to Chapter 39, F.S.¹⁹ The case plan follows the child from the provision of voluntary services through any dependency, foster care, or termination of parental rights proceeding or related activity or process.²⁰ In Judge Parham's family drug court, parents agree to a case plan that includes participating in drug treatment, submitting to random drug testing, appearing at weekly court

Department of Health and Human Services, Administration on Children, Youth and Families, National Center on Child Abuse and Neglect.

¹⁴ See CASA Report, p. 5 (internal citations omitted).

¹⁵ See s. 39.001(4), F.S.

¹⁶ See s. 39.01(14), F.S.

¹⁷ See CASA Report, p. 62.

¹⁸ *Id.* at p. 68 (internal citations omitted).

¹⁹ Section 39.601, F.S., requires that the case plan include a description of the problem being addressed that includes the behavior or act of a parent resulting in risk to the child and the reason for the department's intervention, a description of the tasks with which the parent must comply and the services to be provided to the parent and child specifically addressing the identified problem, including type and frequency of services or treatment, and a description of the measurable objectives, including timeframes for achieving objectives, addressing the identified problem. These broad statutory provisions allow the court to develop a drug court treatment model within the confines of current law.

²⁰ Section 39.01(11), F.S.

hearings, and following any sanctions that the court may impose. The family drug court program is implemented in three phases, typically consisting of:

1. Four weeks of intensive outpatient services (four hours per day, four days per week); group therapy (1½ hours three times per week), and drug testing twice per week;
2. Two to four months of outpatient services (8 hours per week); group therapy twice per week, and drug testing twice per week;
3. Eight to twelve months of outpatient services (three hours per week), group therapy once per week), and drug testing once per week.²¹

The court exercises authority to enforce the provisions of the case plan through its contempt powers. Substantial violations of the provisions of the case plan may result in a formal contempt holding against the parent and could subject a parent to being placed on probation. Subsequent violations after being placed on probation may result in jail time. This component of the family drug court program has caused some critics to question the long-term likelihood of success through a “coerced” treatment plan.²² Proponents of the family drug court model cite research indicating that lack of motivation by the parent is the number one obstacle to treatment in many cases and note the powerful incentives inherent in the drug court treatment model.²³

Section 1 of the bill amends s. 39.001(4), F.S., to provide additional legislative intent relating to substance-abuse treatment. The bill encourages various state and local agencies that are regularly involved in or impacted by dependency proceedings to work cooperatively to support the drug court program model. Substance abuse issues are specifically recognized to be:

- Primarily causing the dramatic rise in cases of child abuse and neglect.
- Immeasurably increasing the complexity of cases in the dependency system.
- Severely compromising or destroying the ability of parents to provide a safe and nurturing home for their children.

Treatment-based drug court program models that integrate judicial supervision, treatment, accountability, sanctions, and community support are further recognized as greatly increasing the effectiveness of substance-abuse treatment and as reducing the number of cases of child abuse and neglect. Intent is also expressed that parents and children be assessed early and continually for substance abuse issues while involved in dependency proceedings.

Consistent with the amended intent language, the bill amends various provisions of chapter 39, F.S., to create a process allowing the court to order a substance-abuse assessment or evaluation of either the child or the parent, legal custodian, or other person requesting custody of the child if that person’s mental or physical condition is in controversy. The order may only be entered subsequent to a good cause showing as to the controversy and subject to the Florida Rules of Juvenile Procedure. A qualified professional, as defined in s. 397.311, F.S., must administer the assessment or evaluation.²⁴ Hereinafter, this process will be referred to as “the procedure.”

²¹ CASA Report, p. 68 (internal citations omitted).

²² See *id.* at p. 75.

²³ See *id.* at p. 71.

²⁴ Section 397.311(25), F.S., defines a “qualified professional” to mean a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-recognized certification process for substance-abuse treatment services and who holds, at a minimum, a bachelor’s degree. Upon conducting the assessment or evaluation provided for in the bill, such professionals would also be capable of recognizing and making referrals if an issue other than substance abuse was subsequently suspected to be the cause of the “controversy.”

Section 2 of the bill adds the procedure to s. 39.402, F.S., which relates to shelter placement.

Section 3 of the bill amends s. 39.407, F.S., which provides for certain physical and mental examinations, to include substance-abuse examinations, and provides for the procedure any time after a shelter petition or petition for dependency is filed.

Section 4 of the bill includes the procedure in s. 39.507, F.S., which relates to adjudicatory hearings.

Section 5 of the bill includes the procedure in s. 39.521, F.S., which relates to disposition hearings

In addition to including a substance-abuse assessment and evaluation procedure throughout dependency proceedings, sections 4 and 5 of the bill also provide the court with authority to further order a person who has been the subject of a court-ordered assessment or evaluation to participate in and comply with any necessary treatment or services identified in the assessment or evaluation. Such treatment or services may include participation in a treatment-based drug court program. The court is responsible for monitoring the progress of treatment participants. The court may impose sanctions for noncompliance with its order.

Section 6 of the bill amends s. 39.701, F.S., which relates to judicial review in dependency cases, in order to provide the court with authority to modify a case plan to include a requirement of participation in a treatment-based drug court program.

Section 7 of the bill amends s. 397.334, F.S., which provides for treatment-based drug court programs. The bill adds additional intent language to recognize that community support increase the effectiveness of drug court programs. The Department of Education is specifically included among the named agencies encouraged by the Legislature to support the creation of treatment-based drug court programs. The bill provides that treatment-based drug court programs shall include restorative justice principles. Subsection (4) of s. 397.334, F.S., is amended to provide that treatment-based drug court programs may include not only pretrial intervention programs, but also postadjudicatory and community-based supervision of offenders transferring from jail or a prison-based treatment program..

Section 7 of the bill also provides that, subject to annual appropriation by the Legislature, each judicial circuit shall establish a minimum of one coordinator position for the treatment-based drug court program. The position is intended to provide support to the drug court program by coordinating the efforts of the various agencies supporting the drug court program pursuant to the provisions of s. 397.334(2), F.S. Additionally, language that is substantially similar to language currently found in ss. 948.08(7) and 985.02, F.S., is added as a new subsection (7) in s. 397.334, F.S. This provision allows the chief judge in each circuit to appoint an advisory committee for the drug-court program.

Section 8 of the bill amends s. 910.035, F.S., which relates to transfer of the drug court case to another county. The trial court shall accept a plea of nolo contendere in the county in which the charge arose. The jurisdiction to which the case was transferred shall dispose of the case.

Section 9 of the bill amends s. 948.08, F.S., which relates to pretrial intervention programs operated by the Department of Corrections. Subsection (7) of s. 948.08, F.S., is repealed in favor of the provisions created in s. 397.334(7), F.S., in section 7 of the bill. The criteria for eligibility to participate in a pretrial intervention program are broadened by striking the existing limitations for:

- Defendants who have previously been admitted to a felony pretrial intervention program.

- Defendants who have previously rejected an offer to participate in a pretrial substance-abuse education and treatment intervention program.

The bill also provides an additional avenue for admission to a pretrial intervention program. With the approval of the state attorney, a defendant who is assessed with a substance-abuse problem, and who:

- Is charged for the first time with a nonviolent third-degree felony; or
- Has previously been convicted of a nonviolent third-degree felony and is presently charged with a second or subsequent nonviolent third-degree felony,

may be referred to a pretrial intervention program pursuant to the bill. Upon successful completion of the pretrial intervention program, such defendants are entitled to the dismissal of their pending nonviolent third-degree felony charge.

Section 10 of the bill amends s. 985.306, F.S., which relates to the delinquency pretrial intervention program. A child charged with a misdemeanor; a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud, without a previous felony conviction, is eligible for admission into a delinquency drug court program.

The bill also provides an additional avenue for admission to a delinquency pretrial intervention program. With the approval of the state attorney, a child who is assessed with a substance-abuse problem, and who:

- Is charged for the first time with a nonviolent third-degree felony; or
- Has previously been adjudicated guilty of or delinquent for a nonviolent third-degree felony and is presently charged with a second or subsequent nonviolent third-degree felony,

may be referred to a pretrial intervention program pursuant to the bill. Upon successful completion of the pretrial intervention program, the child is entitled to the dismissal of his/her pending nonviolent third-degree felony charge.

C. SECTION DIRECTORY:

Section 1: Amends s. 39.001(4), F.S.; provides additional legislative intent relating to substance-abuse treatment.; encourages various state and local agencies that are regularly involved in or impacted by dependency proceedings to work cooperatively to support the drug court program model; creates an assessment procedure

Section 2: Amends s. 39.402, F.S.; adds the procedure by which the court may use the drug court program to the shelter placement proceeding.

Section 3: Amends s. 39.407, F.S.; provides for certain physical and mental examinations, to include substance-abuse examinations, and provides for the procedure any time after a shelter petition or petition for dependency is filed.

Section 4: Amends s. 39.507, F.S.; adds the procedure by which the court may use the drug court program to adjudicatory hearings.

Section 5: Amends s. 39.521, F.S.; adds the procedure by which the court may use the drug court program to disposition hearings.

Section 6: Amends s. 39.701, F.S., relating to judicial review in dependency cases; provides the court with authority to modify a case plan to include a requirement of participation in a treatment-based drug court program.

Section 7: Amends s. 397.334, F.S.; specifically includes Department of Education among named agencies; provides that treatment-based drug court programs include principles of restorative justice; provides that treatment-based drug court programs may also include postadjudicatory and community-based supervision programs; provides that, subject to annual appropriation by the Legislature, each judicial circuit shall establish a minimum of one coordinator position for the treatment-based drug court program; provides that chief judge in each circuit may appoint an advisory committee for the drug-court program.

Section 8: Amends s. 910.035, F.S., relating to transfer of the drug court case to another county.

Section 9: Amends s. 948.08, F.S., in favor of the provisions created in s. 397.334(7), F.S.; broadens criteria for eligibility to participate in a pretrial intervention program.

Section 10: Amends s. 985.306, F.S.; broadens criteria for eligibility to participate in a pretrial intervention program.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Please see "Fiscal Comments" below for further information.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Please see "Fiscal Comments" below for further information.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Office of State Court Administration, private insurance companies could potentially be affected if additional persons are referred to treatment, while treatment providers may see an increase in the number of persons receiving services if additional persons are referred to treatment and other types of services.

D. FISCAL COMMENTS:

The Office of State Court Administration (OSCA) advises as follows:

The bill amends Chapter 39 to encourage the courts and DCF to do early assessment and evaluation of substance abuse problems for parties in dependency proceedings consistent with drug court principles. Both the courts and DCF currently have the authority to require such assessments in Chapter 39. However, this language would strengthen judicial oversight and may potentially result in an increase in the number and frequency of such assessments. It is not possible to determine whether there will be any fiscal impact since the language is permissive for substance abuse assessment, evaluations, and treatment and it is unknown whether additional assessments will be conducted

The bill expands the eligibility criteria for participation in adult and juvenile drug court programs. The drug courts programs would determine, based upon their existing resources, whether they can expand to include the additional eligible offenses. However, it is not anticipated that this will have a fiscal impact since the language in the bill is permissive and participation in a drug court program is not mandated where no funds exist. Those state agencies (such as Department of Juvenile Justice, the Department of Children and Families, and the Department of Corrections) which currently provide funding to drug courts may wish to expend additional funds within their existing resources to support the expansion of drug courts.

The bill provides that drug court coordinators should be established in each judicial circuit contingent upon an appropriation. Currently all judicial circuits have a drug court coordinator, therefore there will be no fiscal impact related to this provision.

This [fiscal] analysis does not take into account any possible effects from the pending implementation of Revision 7.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is granted or revised.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The "Intent" sections of the bill contain language which may impose requirements on DCF.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 25, 2003, the Subcommittee on Children's Services adopted an amendment to the bill. The amendment makes a technical correction and clarifies that nothing in the bill precludes the court from ordering drug testing when substance abuse is suspected to determine the safety of the child's placement.