

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 281 w/CS Substance Abuse Treatment and Intervention  
**SPONSOR(S):** Rep. Adams  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 316

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice (Sub)	4 Y, 0 N	Whittier	De La Paz
2) Public Safety & Crime Prevention	18 Y, 0 N w/CS	Whittier	De La Paz
3) Judiciary	17 Y, 0 N	Thomas	Havlicak
4) State Administration			
5) Judicial Appropriations			
6) Appropriations			

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### SUMMARY ANALYSIS

HB 281 w/ CS expresses legislative intent regarding substance abuse services for families and encourages the courts to support the drug court program model by assessing parents and children for substance abuse problems at every stage of the dependency process.

The bill authorizes the courts, for shelter, dependency, adjudicatory, and disposition hearings, to order persons to submit to substance abuse assessment or evaluation upon a showing of good cause. The bill authorizes the court to require a person to participate in and comply with treatment and services identified as necessary.

The bill provides that, contingent upon an annual appropriation, each judicial circuit is to establish at least one coordinator position for the treatment-based drug court program within the state courts system and authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program.

It is not anticipated that this will have a fiscal impact since the language in the bill is permissive, participation in a drug court program is not mandated, and judicial circuits already have established drug court programs and coordinators for these programs. Participation in a drug court program is left to the discretion of counties.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0281c.ju.doc  
**DATE:** March 11, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 type="checkbox"/>            | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

**Reduce Government** – The bill authorizes the court to create an advisory committee for the treatment-based drug court program and authorizes the courts to order substance abuse evaluations or assessments and participation in a treatment-based drug court programs. The courts must then review the person’s compliance with the program.

**Increase personal responsibility** – A person’s responsibility is not increased, to the extent that a person ordered to drug treatment has their success overseen by a court. It places the responsibility of supervising the individual’s rehabilitation on the court, as well as, on the individual.

#### B. EFFECT OF PROPOSED CHANGES:

HB 281 w/ CS expresses legislative intent regarding substance abuse services for families and encourages the courts to support the drug court program model by assessing parents and children for substance abuse problems at every stage of the dependency process. The bill encourages the Department of Children and Family Services to support the drug court program model and to work in conjunction with community agencies; treatment-based facilities; facilities dedicated to child welfare, child development, and mental health services; the Department of Health; other similar agencies; local governments; law enforcement agencies; and other interested public or private sources in supporting the drug court model.

The bill authorizes the courts, for shelter, dependency, adjudicatory, and disposition hearings, to order persons to submit to substance abuse assessment or evaluation upon a showing of good cause and for the assessments or evaluations to be administered by a qualified professional, as defined in s. 397.311, F.S. The bill authorizes the court to require a person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation and compliance with a treatment-based drug court program. In these instances, the court shall oversee the progress and compliance with treatment and shall impose appropriate available sanctions for noncompliance upon the child or the child’s parent, legal custodian, caregiver, or other person requesting custody of the child.

The bill provides that, contingent upon an annual appropriation, each judicial circuit is to establish at least one coordinator position for the treatment-based drug court program within the state courts system and authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program.

## **The Florida Drug Court System**

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.<sup>1</sup> The Florida Supreme Court has reported that a majority of the offenders were being incarcerated due to drug-related crimes and were “revolving back through the criminal justice system because of underlying problems of drug addiction.”<sup>2</sup> The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment services and the criminal justice system together.<sup>3</sup>

As of January 2004, there are 85 operational and eight planned drug courts in Florida. They are categorized as follows:

- Adult drug courts - 42 operational and two planned,
- Juvenile drug courts - 25 operational and three planned,
- Dependency drug courts - 16 operational and three planned, and
- Reentry<sup>4</sup> drug courts: - Two operational.<sup>5</sup>

Drug courts are operational in 19 of Florida’s 20 judicial circuits.<sup>6</sup> There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.<sup>7</sup>

In 2002, Florida drug courts had over 10,200 admissions and close to 3,000 graduates with a graduation rate of approximately 70%, compared to a national average of 47%. Studies show that drug court graduates experience a significantly reduced recidivism rate.<sup>8</sup>

### **Effects of HB 281 w C/S**

#### **Section 1.**

Section 1 of the bill amends s. 39.001(4), F.S., the Substance Abuse Services subsection of the Proceedings Relating to Children chapter. It expresses legislative recognition that

Substance abuse is the primary cause of the dramatic rise in cases of child abuse and neglect, immeasurably increases the complexity of cases in the dependency system, severely compromises or destroys the ability of parents to provide a safe and nurturing home for children, and severely confounds the dependency system’s ability to protect children.

The bill identifies four goals of the Department of Children and Family Services’ substance abuse treatment and family safety programs for the State of Florida:

- To ensure the safety of children.

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<sup>1</sup> Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p. 1.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> This refers to persons reentering society after release from a correctional program.

<sup>5</sup> *The Florida Drug Court System*, revised January 2004, p. 2.

<sup>6</sup> The 3<sup>rd</sup> judicial circuit currently does not have an operational drug court, but has one in the planning stage.

<sup>7</sup> *The Florida Drug Court System*, revised January 2004, p. 2.

<sup>8</sup> *Ibid.*, p. 4.

- To prevent and remediate the consequences of substance abuse on families involved in protective supervision or foster care and reduce substance abuse, including alcohol abuse, for families who are at risk of being involved in protective supervision or foster care.
- To expedite permanency for children and reunify healthy, intact families, when appropriate.
- To support families in recovery.

The bill encourages the court to support the drug court program model by assessing parents and children to identify and address substance abuse problems at every stage of the dependency process.<sup>9</sup> Further, participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. The treatment-based drug court program model should integrate judicial supervision, treatment, accountability, sanctions, and community support.

The bill encourages the Department of Children and Family Services to support the drug court program model and to work in conjunction with community agencies; treatment-based facilities; facilities dedicated to child welfare, child development, and mental health services; the Department of Health; other similar agencies; local governments; law enforcement agencies; and other interested public or private sources in supporting this model.

## **Section 2.**

Section 2 of the bill amends s. 39.402, F.S., regarding hearings for whether a child is to be placed in a shelter. Subsection (11) is added to authorize the court to order the child or child's parent, caregiver, legal custodian, or other person requesting custody of the child, to submit to a substance abuse assessment or evaluation upon showing of good cause and for the assessments or evaluations to be administered by a qualified professional, as defined in s. 397.311, F.S.<sup>10</sup>

## **Section 3.**

Section 3 of the bill amends s. 39.407, F.S., regarding the mental or physical condition of a child that has been removed from the home and maintained in an out-of-home placement or the parent or person requesting custody of the child. Subsection (15) is added to provide that at any time after a shelter petition or petition for dependency is filed, the court may order the child or child's parent, caregiver, legal custodian, or other person requesting custody of the child to submit to a substance abuse assessment or evaluation upon showing of good cause. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311, F.S.

## **Section 4.**

Section 4 of the bill amends s. 39.507, F.S., relating to adjudicatory hearings for dependency. Subsection (9) is added to provide the court may order the person to submit to a substance abuse assessment or evaluation upon showing of good cause. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311, F.S.

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<sup>9</sup> "Dependency" in this context refers to an adjudicatory hearing on whether a child is to become dependent on state services, and is not referring to dependency on a substance.

<sup>10</sup> Section 397.311(24), F.S., - "Qualified professional" means 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. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

Language is added to authorize the court to require a person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation and compliance with a treatment-based drug court program. In this instance, the court shall oversee the progress and compliance with treatment by the person and shall impose appropriate available sanctions for noncompliance upon the child or the child's parent, legal custodian, caregiver, or other person requesting custody of the child.

#### **Section 5.**

Section 5 of the bill amends s. 39.521(1), F.S., relating to disposition hearings. Subparagraph 1. of paragraph (b) is rewritten to authorize the court to require, when a child is adjudicated by a court to be dependent, the child or child's parent, caregiver, legal custodian, or other person requesting custody of the child to submit to a substance abuse assessment or evaluation upon showing of good cause. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311, F.S.

Language is added to authorize the court to require the person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation and compliance with a treatment-based drug court program. In this instance, the court shall oversee the progress and compliance with treatment by the person and shall impose appropriate available sanctions for noncompliance upon the child or the child's parent, legal custodian, caregiver, or other person requesting custody of the child.

#### **Section 6.**

Section 6 of the bill amends s. 39.701(8), F.S., relating to judicial review of proceedings relating to children. Paragraph (d) is amended to allow the court, if extending the time limitation of the case plan or modifying the terms of the plan, to include a requirement that the parent, foster parent or legal custodian of the child being reviewed participate in a treatment-based drug court program.

#### **Section 7.**

Section 7 of the bill amends s. 397.334, F.S., relating to treatment-based drug court programs. Subsection (3) is amended to provide that, in addition to including pretrial intervention programs, treatment-based drug court programs may include post adjudicatory programs, and the monitoring of sentenced offenders through a treatment-based drug court program. Supervision may also be provided to offenders who transfer from jail or a prison-based treatment program into the community.

Subsection (4) is added to provide that, contingent upon an annual appropriation, each judicial circuit shall establish at least one coordinator position for the treatment-based drug court program within the state courts system to coordinate the responsibilities of the participating agencies and service providers, and including providing case management, monitoring compliance of the participants in the program with court requirements and providing program evaluation and accountability.

Subsection (7) is added to authorize the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program to be comprised of the chief judge, or his or her designee, who is to serve as chair; the judge of the treatment-based drug court program, if not otherwise designated by the chief judge as his or her designee; the state attorney or his or her designee; the public defender or his or her designee; the treatment-based drug court program coordinators; community representatives; treatment representatives; and any other persons the chair finds are appropriate.

## **Section 8.**

Section 8 of the bill amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing. Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have the case transferred to a county other than that in which the charge arose if the drug court program agrees and if specific conditions are met. The bill specifies that if approval for transfer is received from all parties, the trial court shall accept a plea of nolo contendere. The bill clarifies that upon successful completion of the drug court program, the jurisdiction to which the case has been transferred shall dispose of the case. If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred is to dispose of the case within the guidelines of the Criminal Punishment Code.

This provision will facilitate timely closure of drug court cases by allowing these cases to be transferred to another area, and then closed in the original area, thereby reducing the paperwork and time associated with transferring a case back and forth between circuits for closure or possible trial.

## **Section 9.**

The bill provides an effective date of July 1, 2004.

### **C. SECTION DIRECTORY:**

**Section 1:** Amends s. 39.001(4), F.S., relating to substance abuse services in proceedings relating to children.

**Section 2:** Amends s. 39.402, F.S., regarding hearings for whether a child is to be placed in a shelter.

**Section 3:** Amends s. 39.407, F.S., regarding the mental or physical condition of a child that has been removed from the home.

**Section 4:** Amends s. 39.507, F.S., relating to adjudicatory hearings for dependency.

**Section 5:** Amends s. 39.521(1), F.S., relating to disposition hearings.

**Section 6:** Amends s. 39.701(8), F.S., relating to judicial review of proceedings relating to children.

**Section 7:** Amends s. 397.334, F.S., relating to treatment-based drug court programs.

**Section 8:** Amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing.

**Section 9:** Provides an effective date of July 1, 2004.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The language in the bill is permissive and participation in a drug court program will be left to the counties' discretion.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Treatment program providers and private insurance providers may experience an increase in participants who receive the services, if additional persons are referred for treatment. It is indeterminate how many new assessments or evaluations and resulting referrals will be ordered by the courts.

D. FISCAL COMMENTS:

**Department of Children and Family Services**

In its analysis of this bill as filed, the Department of Children and Family Services (DCF) reports that "[f]or those individuals who are eligible for payment of the assessment by the department, it is estimated the impact of this bill will be absorbed into current substance abuse system of care provided for an estimated 8,602 adults and 2,172 children involved in the drug court system." DCF reports that this fiscal impact analysis is based on information from the Office of State Courts Administrator that there will not be a significant increase in the frequency of substance abuse assessments.

**Office of State Courts Administrator**

The Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there will not be a fiscal impact related to the provision that each judicial circuit, contingent upon appropriation, establish the position of drug court coordinator.

In its analysis of this bill as filed, the Office of State Courts Administrator notes that:

The drug court programs would determine, based upon their existing resources, whether they can expand to include the additional eligible offenders. 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.

Under the impending implementation of the revisions to Article V of Florida's Constitution, the state is obligated to pay from state revenues certain case management costs which include "service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334."<sup>11</sup> However, "costs associated with the application of therapeutic jurisprudence principles by the courts" are excluded from the mandated portion of these costs to be borne by the state. Therefore, while costs associated with case management will be paid by the state, to the extent the assessments and treatment described by the provisions of the bill are "therapeutic," they do not appear to have a significant fiscal impact on the state.

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<sup>11</sup> Section 29.004(10)(d), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities. The bill encourages counties to participate in drug court model programs, but does not mandate participation.

##### 2. Other:

It is uncertain whether the statements that parents or other caregivers make during the substance abuse assessment can be used against them in a criminal proceeding. Although it is probable that the person administering the examination would be considered a psychotherapist for purposes of the psychotherapist and patient privilege,<sup>12</sup> it appears that no such privilege would exist since no privilege exists for statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.<sup>13</sup>

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Juvenile Justice, on February 4, 2004, recommended the bill favorably with a strike-everything amendment. The changes to the original bill made by the amendment are as follows:

- Deleted the term "restorative justice";
- Deleted reference to the Florida Rules of Juvenile Procedure;
- When discussing the court's authority to order drug abuse assessments or evaluations, deleted requirements that the physical or mental condition of the person had to be in controversy;
- Added language that when the court is overseeing the progress and compliance with treatment by the child or the child's parent, legal custodian, caregiver, or other person requesting custody of the child, that it imposes appropriate available sanctions for noncompliance with "the child" as well as the child's parent, legal custodian, caregiver, or other person requesting custody of the child;
- Removed Sections 9. and 10., which dealt with eligibility for pretrial intervention for adults arrested for felony offenses and juveniles subject to a petition for delinquency.

On February 4, 2004, the Committee on Public Safety & Crime Prevention passed the bill with a committee substitute that made the above changes to the original bill.

There were no amendments offered in the Judiciary Committee on March 11, 2004.

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<sup>12</sup> Section 90.503, F.S. The constitutional privilege against self-incrimination relates to protecting the accused from giving an admission of guilt against his or her will; Psychiatric examinations generally require testimonial communications of the person examined and any statements obtained from the patient by the doctor are used as evidence of mental condition only, and not as evidence of the factual truth contained therein, *Parkin v. State*, 238 So.2d 817 (Fla. 1970); A person's prior substance abuse treatment as part of a plea agreement, did not constitute a court-ordered examination under the statute providing that there is no psychotherapist-patient privilege for communications made during a court-ordered examination of the mental conduct of the patient, *Viveiros v. Cooper*, 832 So.2d 868, (Fla. 4th DCA 2002).

<sup>13</sup> Section 90.503(4)(c), F.S.