

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1069 Defendants in Specialized Courts

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Perry and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	Schrader	Lloyd
3) Judiciary Committee	15 Y, 0 N, As CS	Keegan	Havlicak

### SUMMARY ANALYSIS

Currently, s. 910.035(5), F.S., allows any person who is eligible for participation in a preadjudicatory drug court program to have the case transferred to a county other than that in which the charge arose if:

- The representative of the drug court program of the county requesting to transfer the case consults with the representative of the drug court program in the county to which transfer is desired; and all parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court. Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case.

The bill expands s. 910.035(5), F.S., so that a person eligible to participate in *any type* of problem solving court (PSC), not just a preadjudicatory drug court, may have their case transferred to another county if:

- The defendant agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the PSC in the county to which transfer is requested; and
- Both authorized representatives agree to the transfer.

The bill defines “problem-solving court” to include preadjudicatory and postadjudicatory drug courts pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; preadjudicatory and postadjudicatory veterans' courts pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; and mental health courts.

The bill is effective July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### Preadjudicatory Diversion Programs

A variety of programs currently exist that offer criminal defendants an alternative to prosecution by diverting their cases into pretrial diversion programs. For example, Pretrial Intervention (PTI) programs allow defendants with pending felony or misdemeanor charges the opportunity to have their charges dismissed if they successfully complete PTI program requirements.<sup>1</sup> The purpose of these programs is to provide defendants with services such as counseling, education programs, and psychological treatment.<sup>2</sup> Generally, PTI programs accept defendants charged with a misdemeanor or third degree felony so long as the defendant, PTI program administrator, victim, prosecutor, and presiding judge agree.<sup>3</sup>

###### Postadjudicatory Diversion Programs

Florida law also establishes postadjudicatory programs designed to provide supervised community treatment services in lieu of incarceration for criminal defendants who have entered a guilty or nolo contendere plea to a crime.<sup>4</sup> For example, postadjudicatory drug court programs serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion of the program, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.<sup>5</sup>

###### Problem-Solving Courts

Florida law authorizes specialty preadjudicatory and postadjudicatory programs for military service members and veterans (veterans' courts),<sup>6</sup> as well as for defendants with a high risk of substance abuse (drug courts).<sup>7</sup> These specialty programs, often referred to as problem-solving courts (PSCs) focus on sobriety, counseling, and the unique needs of the specialty groups served by the program.<sup>8</sup> In addition, while not codified in statute, many judicial circuits have created what are often referred to as mental health courts. Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

###### Transferring Criminal Cases to Other Counties

Florida law currently authorizes criminal cases to be transferred between counties in limited circumstances. For example:

- When a defendant is arrested or held in a county other than the county where the defendant's criminal charges are pending, the criminal case may be transferred to the county where the defendant is being held.<sup>9</sup>

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<sup>1</sup> See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

<sup>2</sup> George E. Tragos & Peter A. Sartes, *Diversion Programs: PTI...Dismissal...Problem Solved...or Is It?*, 82 THE FLA. BAR J. 73 (Oct. 2008).

<sup>3</sup> See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

<sup>4</sup> See, e.g., ss. 394.47891, 948.01, 948.06, 948.20, and 948.21, F.S. See also, Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

<sup>5</sup> Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

<sup>6</sup> ss. 948.08(7) and 948.16(2) and (3), F.S.

<sup>7</sup> ss. 948.16(1)(a) and 985.345, F.S.

<sup>8</sup> See, e.g., EIGHTEENTH JUDICIAL CIRCUIT COURTS, *Court Programs – Seminole Drug Court*, <http://www.flcourts18.org/page.php?109> (last visited March 13, 2015); Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

<sup>9</sup> Section 910.035(1), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the indictment or information is pending, and 3) to consent to

- When a defendant does not have criminal charges pending, but is arrested on a warrant issued in a county other than the county where the defendant was arrested, the criminal case may be transferred to the county where the defendant was arrested.<sup>10</sup>

In addition, s. 910.035(5), F.S., allows the transfer of a criminal case involving a PSC. This statute allows any person who is eligible for participation in a preadjudicatory drug court program<sup>11</sup> to have the case transferred to a county other than that in which the charge arose if:

- The authorized representative of the drug court program of the county requesting to transfer the case consults with the authorized representative of the drug court program in the county to which transfer is desired; and
- All parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order<sup>12</sup> directing the clerk to transfer the case to the county which has accepted the defendant into its drug court.<sup>13</sup> After the transfer takes place, the clerk must set the matter for a hearing before the drug court judge and the court must ensure the defendant's entry into the drug court.<sup>14</sup>

Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case pursuant to s. 948.08(6), F.S. If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.<sup>15</sup>

### **Effect of the Bill**

The bill expands s. 910.035(5), F.S., to allow a person eligible to participate in a preadjudicatory or postadjudicatory PSC to have their case transferred to another county. Specifically, the bill requires a person who is eligible to participate in a PSC to have his or her case transferred to another county upon request by the person or the court, if:

- The person agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the PSC in the county to which transfer is requested; and
- Both authorized representatives agree to the transfer.

If the above requirements are met, the trial court must enter a transfer order directing the clerk to transfer the case. Any transfer order must include specified documents depending on whether the case is postadjudicatory or preadjudicatory.<sup>16</sup> After the transfer takes place, the clerk in the receiving jurisdiction must set the matter for a hearing before the PSC judge to ensure the defendant's entry into the PSC.

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disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

<sup>10</sup> Section 910.035(2), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the warrant was issued, and 3) to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

<sup>11</sup> Section 948.08(6), F.S., sets forth the eligibility criteria for participation in such programs.

<sup>12</sup> The transfer order must 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 in the case; the defendant's mailing address and phone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's drug court program. s. 910.035(5)(c), F.S.

<sup>13</sup> s. 910.035(5)(b), F.S.

<sup>14</sup> s. 910.035(5)(d), F.S.

<sup>15</sup> s. 910.035(5)(e), F.S.

<sup>16</sup> A transfer order for a pretrial case must include: a copy of the probable cause affidavit; any case charging documents; all case reports, witness statements, test results, evidence lists, and other documents; the defendant's mailing address and telephone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's problem-solving court. A transfer order for a postadjudication case must include: the case charging documents; the final disposition; all case reports, test results, and other documents; the defendant's mailing address and telephone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's problem-solving court.

Upon successful completion of the PSC, the jurisdiction to which the case has been transferred must dispose of the case. If the defendant does not complete the PSC successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.<sup>17</sup>

The bill defines “problem-solving court” to mean a preadjudicatory or postadjudicatory drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a preadjudicatory or postadjudicatory veterans' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or a mental health court.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 910.035, F.S., relating to transfer from county for plea and sentence.

Section 2. Provides an effective date of July 1, 2015.

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

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

**1. Revenues:**

The bill does not appear to have any impact on state revenues.

**2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill does not appear to have any impact on local government revenues.

**2. Expenditures:**

The bill may have a minimal fiscal impact on local government expenditures because counties will be required to take administrative and procedural steps to transfer criminal cases between counties.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

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<sup>17</sup> s. 910.035(5)(e), F.S.  
**STORAGE NAME:** h1069e.JDC  
**DATE:** 4/3/2015

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment:

- Expands the transfer process to allow a person eligible to participate in a preadjudicatory or postadjudicatory PSC to have their case transferred to another county;
- Adds a requirement that the defendant must consent to any transfer; and
- Provides separate requirements for the transfer orders for preadjudicatory and postadjudicatory cases.

On April 2, 2015, the Judiciary Committee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment clarifies the responsibilities of the jurisdiction receiving the transferred case.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.