

STORAGE NAME: h0147a.cp

DATE: February 4, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 147

RELATING TO: Pretrial Intervention Programs

SPONSOR(S): Representative Alexander and Representative Putnam

COMPANION BILL(S): SB 60

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

- (1) CRIME AND PUNISHMENT YEAS 5 NAYS 0
- (2) CORRECTIONS
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill revises the statute governing pretrial intervention programs to authorize the court or the state attorney to deny the admission of a defendant to a pretrial substance abuse and treatment intervention program if the defendant has rejected any prior offer of admission to such program.

The bill provides an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pretrial intervention programs are used to divert certain offenders from “traditional” prosecution and these programs provide for the dropping or dismissing of criminal charges once the offender complies with the conditions imposed by the state attorney or the court. One of the most common pretrial intervention programs is commonly known as the “drug court”, funded by federal, state, local, offender fee, and non-profit sources.

The first drug court, developed in Dade County by Judge Herbert Klein, required drug offenders to submit to regular urine test and return to court on an average of once a month for a review of their progress.

Subsection (6), of section 948.08, F.S., was enacted in response to the proliferation of drug courts in the early 1990's. It is commonly referred to as the drug court statute because it gives chief judges the authority to establish pre-trial substance abuse education and treatment intervention programs and grants the court the authority to dismiss a defendant's charges upon successful completion. The statute establishes the following eligibility criteria:

- ▶ the defendant must be charged with a second or third degree felony for the purchase or possession of a controlled substance under chapter 893;
- ▶ defendant must not have previously been convicted of a felony; and
- ▶ defendant must not have been previously admitted to a pre-trial program.

A defendant who is eligible may be allowed to attend a treatment program, which must be one year in duration. The statute allows for the state attorney to contest the admission of a defendant into a program when the facts and circumstances suggest the defendant's involvement in drug dealing and selling. If the state attorney fails to object to the defendant's failure to meet the statutory criteria or if the state attorney objects after the defendant has been through the program, the defendant is still entitled to a dismissal of the charges.

The statute provides that if the court finds the defendant failed to successfully complete the program, it may order the defendant to continue in the program “or order that the charges revert to the normal channels for prosecution.” However, if it finds that the defendant successfully completed the program, the court shall dismiss the charges. The statute does not provide any criteria for automatic termination from the program; the only termination authorized is upon a judicial finding that a defendant has failed to successfully complete the program.

It has been reported by prosecutors that in some jurisdictions with drug courts, particularly in Polk County, there has been a recurring problem of rejection of program placement by offenders who qualify for such programs. These offenders then have a public defender appointed to them and they go through the traditional process of criminal prosecution. Once many of these offenders have pressed his or her case all the way to trial, the offenders finally choose to go into the drug court program. Some courts have determined that an offender may be admitted to the drug court program at any time

prior to final disposition of the criminal case even though the offender has refused to participate on an earlier occasion.

B. EFFECT OF PROPOSED CHANGES:

The bill amends subsection (6) of s. 948.08, F.S., to allow a court or the state attorney to deny a defendant from being placed in a pretrial substance abuse education and treatment intervention program if the defendant had previously rejected an offer to be placed in such a program. The authority is permissive only and would not be mandatory. Therefore, there may be instances in which an offender previously rejected placement in such a program for certain reasons that later are deemed reasonable by the court that would warrant allowing the offender's subsequent admission into a drug-court pretrial intervention program after his or her previous rejection.

This bill could limit abuses by offenders who opt for pretrial diversion on the eve of their trial by allowing the court or the state attorney to deny defendants' admission to drug court programs once they have turned down such offers, thus forcing an offender to make a genuine decision about participation in pretrial detention much earlier in the criminal process.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

No.

- (4) Are families required to participate in a program?

No.

- (5) Are families penalized for not participating in a program?

No.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

948.08, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Revises the provision of law governing pretrial intervention programs to authorize the court or state attorney to deny the admission of a defendant to a pretrial substance abuse and treatment intervention program if the defendant has rejected any prior offer of admission to such program.

Section 2: Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference reviewed this bill on December 18, 1998, and determined it has no prison bed impact; however, it may have an impact on the Department of Correction's supervision population or on local detention facilities.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise the revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The companion bill in the Senate has favorably passed through two committees and is awaiting a vote on the Senate floor. The only difference between the two versions is that the House version includes state attorneys in the ability to deny the admission of a defendant to a pretrial substance abuse and treatment intervention program if the defendant has rejected a prior offer of admission.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor offered an amendment in the Crime and Punishment Committee which requires that the defendant's refusal to participate in a pretrial substance abuse and treatment intervention program to be made on the record at least 30 days after arraignment before the court or the state attorney may prohibit the offender from participating in such a program at a later date. The bill without the amendment does not make it clear whether the refusal needed to be on the record or even whether the defendant could refuse drug court before the defendant obtains an attorney.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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