

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: CS/CS/SB 1814

SPONSOR: Committees on Criminal Justice and Judiciary and Senator Burt

SUBJECT: Drug Courts

DATE: April 24, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Gardner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires each of the 20 judicial circuits to establish one or more treatment-based drug court model program. It requires the drug court model to incorporate principles of therapeutic jurisprudence through the coordination of the courts, prosecutors, law enforcement, local government and community-based entities to address substance abuse offenders. It creates the Florida Association of Drug Court Professionals which will be required to submit annual recommendations to the Supreme Court Treatment-Based Drug Court Steering Committee regarding issues relating to the expansion, operation, and institutionalization of drug courts.

The bill allows for certain drug court cases to be transferred from one county or circuit to another. It also clarifies those categories of defendants eligible for participation in the felony pretrial intervention program and provides for the establishment of pretrial intervention programs for specified misdemeanor drug offenses.

The following sections of the Florida Statutes are amended: 910.035 and 948.08. Section 948.16 and a yet unnumbered section of the Florida Statutes are also created.

II. Present Situation:

In 1989, the first treatment-based drug court in the nation was pioneered in Dade County, Florida. The concept initially stemmed from a federal mandate to reduce inmate population or otherwise lose federal funding. National studies indicated that for a large majority of criminal inmates, underlying problems of substance abuse contributed to a high percentage of recidivism of drug offenders. Consequently, the Florida Supreme Court directed research into the problem to develop a multidisciplinary approach to integrating treatment services into the criminal justice system.

Pursuant to an administrative order entered January 27, 1999, by former Chief Justice Major Harding, the Florida Supreme Court established the Treatment-Based Drug Court Steering Committee to assist the executive and legislative branches with the development of a state drug policy. Pursuant to the order which is effective up to July 1, 2002, the Committee's goals are as follows:

- Assist representatives of the executive and legislative branches in the development of a comprehensive, coordinated state policy on substance abuse;
- Propose a treatment-based drug court model with standards and guidelines for its development and operation;
- Recommend reciprocal agreements among jurisdictions within and outside the state of Florida regarding equitable service and treatment of transferred cases;
- Determine and recommend training of drug court professionals;
- Recommend changes to legislation, administrative policy, or court rules to implement and operate treatment-based drug courts;
- Research and investigate funding alternatives; and
- Analyze other issues impacting the treatment-based drug court concept.

The Committee has adopted the 10 Key components that have been recognized nationally as the model to follow for implementation of adult drug courts.¹ The Committee continues to address the charges set forth in the administrative orders including completing a proposal for a treatment-based drug court model with standards and guidelines. As of April 1, 2001, Florida has 31 operational and 7 planned adult drug court programs, 14 operational and 6 planned juvenile drug court programs, and 7 operational and 4 planned dependency drug court programs. Nationwide, there are more than 1,000 courts which have implemented or are planning to implement a drug court to address the problems of substance abuse and drug-related crimes. Many of these drug courts are funded through federal Department of Justice grants as authorized by the Crime Act of 1994 (Title I, Subchapter XII-J of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3796ii et seq.). The Office of the State Courts Administrator received a grant from the Department of Justice Drug Court Programs Office to develop in part a statewide drug court conference to be held by the Spring of 2002.

Although there is no current state statute or constitutional provision relating to "drug courts" or the components of a drug court, pretrial intervention programs under s. 948.08, F.S., have been used as the conceptual foundation for the voluntary implementation of drug court programs in many of the circuits. Under this section, a chief judge has the authority to establish pre-trial substance abuse education and treatment intervention programs and the authority to dismiss a defendant's charges upon successful completion or otherwise reinstate the charges for prosecution. The chief judge in each circuit may appoint an advisory committee for the pretrial intervention program consisting of the chief judge, the state attorney, the public defender, the program administrator, and other person deemed appropriate for determining eligibility of defendants. A person charged with a second or third degree felony purchase or possession of a controlled substance, who has no prior felony convictions or prior admissions into a pretrial

¹ In January 1997, the U.S. Department of Justice released *Defining Drug Courts: The Key Components*, based on the experiences of those in the drug court field.

intervention program, is eligible for admission into a drug court program for a period of not less than one year. Currently, the prosecutor does not have absolute veto power in determining who is eligible for the program.

III. Effect of Proposed Changes:

Section 1 states legislative intent to implement treatment-based drug courts in each of the 20 judicial circuits. The purpose is to break the cycle of addiction, mitigate crime and recidivism, and reduce cases of abuses, and neglect and familial dysfunction.

The drug court model program may be established in the misdemeanor, felony, family, delinquency, or dependency division of each judicial circuit. The program model must involve coordinated partnerships and shared resources between the Department of Corrections, the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, local governments, other law enforcement agencies and other community-based service providers. The model program may include pretrial intervention and post-adjudicatory programs as set forth in statute. Each model program must include the principles of therapeutic jurisprudence and must adhere to the 10 key components that have been recognized by the Department of Justice's Drug Courts Program Office and already endorsed by the Florida Supreme Court Treatment-Based Drug Court Steering Committee. The 10 key components are:

- 1) Integration of alcohol and other drug-treatment services with case processing.
- 2) Use of a nonadversarial approach in balancing the promotion of public safety and protection of due process rights.
- 3) Early identification of eligible participants and placement in treatment programs.
- 4) Access to a continuum of substance abuse treatment and rehabilitation services.
- 5) Frequent substance or drug testing to monitor abstinence.
- 6) Coordinated strategy for governing drug court response to participant's compliance.
- 7) Ongoing judicial interaction with each participant.
- 8) Coordinated management and evaluation measures of program goals and effectiveness.
- 9) Continual interdisciplinary education for drug court operations.
- 10) Development of partnerships among drug courts, public criminal justice agencies, treatment delivery systems, and community-based organizations.

The bill creates the voluntary Florida Association of Drug Court Professionals to consist of drug court practitioners from multidisciplinary fields, including judges, state attorneys, defense counsels, drug court coordinators, criminal justice personnel, law enforcement officers, academicians, and treatment professionals. The Association is to report to the Florida Supreme Court Treatment-Based Drug Court Steering Committee annually by October 1, with recommendations regarding drug court issues.

Section 2 amends s. 910.035, F.S., to permit a defendant who is eligible for a drug court program to have his or her case transferred to another county if the sending county and the receiving county agree to the transfer. If agreed upon, the trial court of the sending county directs the transfer order. 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 addition, the order must include the defendant's written consent to abide by the court rules. Upon transfer, the defendant's case is set for hearing. If the defendant fails to complete the drug court program, the charges are to be prosecuted in the manner determined by the state attorneys of the sending and receiving counties.

Section 3 amends s. 948.08, F.S., determining which offenders would be eligible to be admitted to pretrial intervention (drug court) programs. This amendment would have the practical effect of establishing three categories of criminal offenses affecting drug court admission: drug offenses, nonviolent offenses which may be drug related, and violent offenses. Persons charged with tampering with (drug) evidence, solicitation for the purchase of a controlled substance, or fraudulent acquisition of a prescription, as well as, felony possession or purchase of a controlled substance, would be eligible for admission into a pretrial intervention program. Persons charged with nonviolent offenses which may be drug related, such as theft or fraud would be eligible only upon the recommendation and approval of a state attorney. Persons charged with violent offenses, including but not limited to, murder, sexual battery, robbery, car jacking, and home invasion robbery, would not be eligible for admission to such a program.

Section 4 creates 948.16, F.S., to authorize the establishment of pretrial substance abuse treatment and intervention programs for defendants charged with specified misdemeanor offenses. Either party or the court may move to place a defendant in such programs. If the state attorney objects to the defendant's admission into the program and establishes by a preponderance of the evidence that the defendant was involved in selling illegal drugs, the court must deny the defendant admission into the program. Any public or private entity providing services pursuant to this section must enter into a contract with local government and contract terms must include at a minimum the requirements established for private entities under s. 948.15, F.S., which requires specified information about the program, staff levels, collection and restitution procedures, and other such information. The chief judge must approve the contract.

Section 5 provides an effective date of July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

- In November, 1998, Florida voters adopted a Constitution Revision Commission amendment to article V of the Florida Constitution to shift major costs of Florida's judicial system from the counties to the state. *See* art. V, s. 14, Fla. Const. Last year, the Legislature established a framework for defining the constitutionally mandated or essential elements of a state courts system, the public defenders' offices, the state attorneys' offices, court-appointed counsel, and those court-related functions that are the responsibility of the counties for funding purposes. *See* ch. 2000-237, L.O.F. The Legislature also provided for a four-year implementation schedule to be completed by July 1, 2004. The Joint Legislative Committee on Article V was appointed to coordinate and oversee this effort. To date, the committee has not met. Although this bill does not appropriate any state funds at this time, the creation of "drug court" programs may establish precedence for its funding in the future as an essential element of a uniform state courts system which has not yet been determined.

To the extent that this bill is not construed as circumventing or otherwise interfering with the Supreme Court's constitutional authority to administer the court system and to adopt rules for the practice and procedure in all courts, the separation of powers doctrine under section 3 of article II of the Florida Constitution is not implicated. However, the bill is ambiguous as to whether it unconstitutionally shifts the authority to establish the drug court division in each judicial circuit from the Supreme Court to the chief judge of each judicial circuit.

- This bill provides for the establishment of "drug courts." In Florida, these specialty courts are misnomers. The Florida Constitution prohibits the establishment of any court other than the Supreme Court, district courts of appeal, circuit courts, and county courts. *See* Art. V, s. 1, Fla. Const. However, with the exception of the Supreme Court, all courts may establish specialized court "divisions" through local rule approved by the Florida Supreme Court. *See* art. V, s. 7, Fla. Const.; s. 43.30, F.S. These constitutional and legislative grants of authority have been used by county and circuit courts to channel their judicial resources to create divisions responsive to the caseload demands, community needs, and judicial agenda of the county or circuit. *See Examination of the Jurisdiction of Florida Trial Courts*, Senate Judiciary Committee, Interim Project Report 2000-258, August, 1999. As a primary judicial and case management tool, it is also used by the courts to differentiate, streamline and process specific categories of cases. However, some of these specialty divisions or programs have been subsequently institutionalized as "courts" in some judicial circuits within the formal framework of Florida's two-tier trial court system, oftentimes with their own set of Supreme Court adopted court rules. *See* e.g., Fla. Fam.L. Rules; Fla. R. Traf. Ct.
- A defendant has a constitutional right to a trial by an impartial jury where the offense occurred. *See* s. 16, art. I, Florida Constitution; *see also Stone v. State*, 378 So.2d 765 (Fla.1979), cert. denied, 449 U.S. 986, 101 S.Ct. 407, 66 L.Ed.2d 250 (1980). Consistent with this right, current statutory law provides that upon appropriate motion or consent of the defendant, the trial must be held in the county where the offense was committed. *See* s. 910.03, F.S. In cases where the defendant pleads, the defendant may waive trial in the

county where the indictment or information is pending and consent to disposition of the case in a county other than where the indictment or information is pending, subject to the approval of the prosecuting attorney of the county where the indictment or information is pending. *See* s. 910.035, F.S.

The new s. 910.035, F.S., relating to transfers of cases involving specified offenders participating in substance abuse treatment programs, raises some due process considerations. It states that the transfer need only be initiated by the wishes of the drug court coordinator who must consult with the drug court coordinator in the other county and the entry of a transfer order. It is unclear whether the eligible defendant's approval to such transfer is expressly required within the requirement that the "transfer is approved by all parties" or whether the defendant's consent to participate in the program constitutes an implied consent to the transfer. Additionally, it is not clear whether the defendant is expressly or impliedly or unknowingly waiving his or her right to trial in the county where the offense arose should the defendant fail to complete the drug court program successfully and subsequent prosecution ensues. Under this section, both the state attorneys of the sending and receiving counties determine how the defendant should be prosecuted. No mention is made of where the prosecution must then occur.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the treatment-based drug court programs help stem the recidivism rate of drug offenders and provides an integrated, comprehensive and effective approach to handling the difficult social problem of substance abuse, this bill may have substantial positive impact for the offender, the offender's family, the local community and the general public.

C. Government Sector Impact:

The fiscal impact of this bill on the various entities involved is indeterminate. Funding for existing drug court programs are drawn from federal, state, and local monies. The bill does not specifically designate funding for judicial, state attorney, public defender or agency positions for the operation of a drug court program. Although the bill requires the establishment of treatment-based drug court programs and the appointment of a drug court coordinator in each judicial circuit, no additional resources are appropriated. While some judicial circuits and agencies may be able to absorb staffing for the new drug courts within existing resources, other judicial circuits and agencies may have to add staff positions to participate in the drug court program operations.

There may also be attendant costs resulting from greater participation of persons in pretrial intervention programs but these costs may be offset by greater costs from prosecution and imprisonment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that defendants who are “charged with tampering with evidence, soliciting the purchase of a controlled substance, and obtaining a prescription by fraud” may be eligible for the felony pretrial program under s. 948.08, F.S. However, no specific statutory citations to such criminal offenses are provided which may lead to some confusion.

VIII. Amendments:

None.

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