

By Representative Harper

1 A bill to be entitled
2 An act relating to substance abuse; creating s.
3 948.201, F.S., the "Substance Abuse and Crime
4 Prevention Act"; providing findings and
5 purpose; providing definitions; providing for
6 assignment of certain nonviolent drug offenders
7 to rehabilitative treatment programs; providing
8 conditions of such assignment; providing
9 conditions for subsequent prosecution;
10 providing for an annual accountability and
11 evaluation study; providing applicability to
12 other provisions of law; providing
13 severability; providing prospective
14 applicability; providing a contingent effective
15 date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Section 948.201, Florida Statutes, is
20 created to read:

21 948.201 Substance abuse and crime prevention.--

22 (1) SHORT TITLE.--This section may be cited as the
23 "Substance Abuse and Crime Prevention Act."

24 (2) FINDINGS AND PURPOSE.--

25 (a) The Legislature finds:

26 1. Substance abuse treatment is a proven public safety
27 and health measure. Nonviolent drug-dependent criminal
28 offenders who receive such treatment are much less likely to
29 abuse drugs and commit future crimes and are likely to live
30 healthier, more stable, and more productive lives.

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1 2. When nonviolent persons convicted of drug
2 possession or drug use are provided appropriate
3 community-based treatment instead of incarceration,
4 communities are healthier and safer, while taxpayer dollars
5 are saved.

6 3. In 1996, Arizona voters overwhelmingly approved the
7 Drug Medicalization, Prevention, and Control Act, which
8 diverted nonviolent drug offenders into drug treatment rather
9 than incarceration. According to a report prepared by the
10 Arizona Supreme Court, the Arizona law has helped more than 75
11 percent of program participants remain drug free, resulting in
12 safer communities and saving state taxpayers millions of
13 dollars.

14 4. In 2000, California voters overwhelmingly approved
15 Proposition 36, also known as the Substance Abuse and Crime
16 Prevention Act. The initiative allows first-time and
17 second-time nonviolent, simple drug possession offenders to
18 receive substance abuse treatment instead of incarceration.
19 It is estimated that this initiative will save California
20 taxpayers \$1.5 billion over 5 years.

21 (b) The purpose of this section is to enhance public
22 safety by reducing drug-related crime and preserving jail and
23 prison cells for serious and violent offenders, to improve
24 public health by reducing drug abuse and drug dependence
25 through proven and effective drug treatment strategies, and to
26 halt the wasteful expenditure of hundreds of millions of
27 dollars each year on the incarceration and reincarceration of
28 nonviolent drug offenders who would be better placed in
29 community-based treatment.

30 (3) DEFINITIONS.--As used in this section:
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1 (a) "Rehabilitative treatment program" means the least
2 restrictive rehabilitative treatment program available, as
3 determined by clinical assessment. Such a program shall
4 include drug treatment provided by a certified community drug
5 treatment program. Such a program may include one or more of
6 the following: outpatient treatment, halfway house treatment,
7 narcotic replacement therapy, drug education or prevention
8 courses, and inpatient or residential drug treatment, as
9 needed to address special detoxification or relapse situations
10 or severe dependence, vocational training, family counseling,
11 literacy training, or community service.

12 (b) "Nonviolent drug offense" means an offense
13 involving the possession or sale of a controlled substance, as
14 defined in s. 893.02, and which offense did not involve the
15 use, attempted use, or threatened use of physical force
16 against another person.

17 (4) APPROPRIATE ASSIGNMENT OF NONVIOLENT DRUG
18 OFFENDERS.--

19 (a) After arraignment, the court shall direct that a
20 clinical assessment be performed of all persons charged with a
21 nonviolent drug offense, with the consent of the person
22 arrested. Such clinical assessment shall form the basis for
23 all orders pursuant to this section.

24 (b) There shall be a presumption that any person who
25 would otherwise be arraigned for a nonviolent drug offense for
26 the first time shall, prior to the entry of a guilty plea, be
27 ordered by the court to participate in and complete a
28 rehabilitative treatment program. This section shall apply to
29 all first-time felony nonviolent drug offenders and all
30 misdemeanor nonviolent drug offenders.

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1 (c) Upon application by the defendant, and upon good
2 cause shown, the court may allow a repeat nonviolent felony
3 drug offender to plead guilty to the drug offense and
4 subsequently order the person to participate in and complete a
5 rehabilitative treatment program. The repeat nonviolent
6 felony drug offender shall be sentenced in accordance with
7 applicable provisions of the criminal code, but such sentence
8 shall be suspended during the defendant's participation in
9 appropriate rehabilitative treatment and until completion of
10 such treatment.

11 (d) Paragraphs (b) and (c) do not apply to any person
12 who:

13 1. Has been convicted within the previous 5 years of a
14 felony involving the use or threatened use of physical force
15 against another person.

16 2. In addition to the conviction of the nonviolent
17 drug offense, has been charged or convicted in the same
18 proceeding of a felony not related to the use of drugs.

19 3. Refuses participation in a rehabilitative treatment
20 program.

21 4. Has two separate convictions for nonviolent drug
22 offenses, has participated in two separate courses of
23 rehabilitative treatment under this section, and is found by
24 the court by clear and convincing evidence to be unsuitable
25 for any available form of rehabilitative treatment.

26 (e) If, during the course of rehabilitative treatment,
27 the treatment provider determines that the defendant is
28 unsuitable for the treatment being provided, but may be
29 suitable for other rehabilitative treatment programs, the
30 court may modify the terms of its order to ensure that the
31 person receives the alternative treatment or program.

1 (f) Nothing in this section precludes a defendant from
2 declining to participate in a rehabilitative treatment
3 program. A person who declines such participation shall be
4 prosecuted and sentenced in accordance with otherwise
5 applicable provisions of the criminal code.

6 (5) SUBSEQUENT PROSECUTION.--

7 (a) When any person participating in a rehabilitative
8 treatment program pursuant to subsection (4) is arrested for
9 an offense other than a nonviolent drug offense or violates a
10 non-drug-related condition of the order subjecting the person
11 to a rehabilitative treatment program or non-drug-related
12 condition of probation, the state attorney may move to proceed
13 with prosecution, at which time the court shall conduct a
14 hearing. If the alleged violation is proved, the court may
15 modify its order or the conditions of probation or may direct
16 prosecution to proceed.

17 (b) When any person participating in a rehabilitative
18 treatment program pursuant to subsection (4) is arrested for a
19 nonviolent drug possession offense or violates a drug-related
20 condition of the order subjecting the person to a
21 rehabilitative treatment program or a drug-related condition
22 of probation, the state attorney may move to proceed with
23 prosecution, and the court shall conduct a hearing. If the
24 alleged violation is proved and the state proves by clear and
25 convincing evidence that such person poses a danger to the
26 safety of other persons, the court may order that prosecution
27 should proceed. Otherwise, the court may order that the
28 rehabilitative treatment program be intensified or modified.

29 (c) When the court directs that prosecution may
30 proceed, in no event shall any person who has failed to
31 successfully complete a rehabilitative treatment program

1 pursuant to this section receive a sentence that exceeds the
2 sentence to which the person would have been subject had the
3 person declined to participate in the rehabilitative treatment
4 program.

5 (d) When the court directs that prosecution of a
6 first-time felony nonviolent drug offender or any misdemeanor
7 nonviolent drug offender may proceed because the person has
8 failed to successfully complete a rehabilitative treatment
9 program pursuant to this section, notwithstanding any other
10 provision of law, the trial court shall not sentence such
11 defendant to a term that exceeds 30 days in jail.

12 (e) When a defendant has two separate convictions for
13 a nonviolent drug possession offense, has participated in two
14 separate courses of drug treatment, and is found by the court
15 by clear and convincing evidence to be unsuitable for any
16 available form of drug treatment, the defendant is not
17 eligible for continued probation under subsection (4).
18 Notwithstanding any other provision of law, the trial court
19 shall not sentence such defendant to a term that exceeds 90
20 days in jail.

21 (f) At any time after completion of treatment, a
22 defendant subject to paragraph (4)(b) may petition the court
23 for dismissal of the charges. If the court finds that the
24 defendant successfully completed the prescribed course of
25 treatment and substantially complied with the conditions of
26 probation, the charges against the defendant shall be
27 dismissed and the court record sealed in accordance with s.
28 943.059.

29 (g) At any time after completion of treatment, a
30 defendant sentenced pursuant to paragraph (4)(c) may petition
31 the court for dismissal of the charges. If the court finds

1 the defendant successfully completed the prescribed course of
2 treatment, the conviction on which the sentence was based
3 shall be set aside. The plea entered by the defendant shall
4 be withdrawn, the charges dismissed, and the court record
5 sealed in accordance with s. 943.059.

6 (6) ANNUAL ACCOUNTABILITY AND EVALUATION STUDY.--The
7 department shall annually conduct a study to evaluate the
8 effectiveness and financial impact of the programs that are
9 funded pursuant to the requirements of this section. The
10 study shall include, but not be limited to, a study of the
11 implementation process, a review of incarceration costs, crime
12 rates, prison and jail construction, welfare costs, the
13 adequacy of funds appropriated, and any other impacts or
14 issues the department can identify.

15 (7) APPLICABILITY TO OTHER PROVISIONS OF LAW.--The
16 provisions of this section shall control over any conflicting
17 provision of law, including any conflicting provision of s.
18 397.334, s. 910.035(5), s. 948.01(13), s. 948.034, s. 948.08,
19 s. 948.16, or s. 985.306.

20 Section 2. If any provision of this act or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity shall not affect other provisions or
23 applications of the act which can be given effect without the
24 invalid provision or application, and to this end the
25 provisions of this act are declared severable.

26 Section 3. This act shall take effect July 1, 2002,
27 and apply prospectively, if House Bill ____ or similar
28 legislation creating the Substance Abuse Treatment Trust Fund
29 is adopted in the same legislative session or an extension
30 thereof and becomes law.

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HOUSE SUMMARY

Creates the "Substance Abuse and Crime Prevention Act" to provide for assignment of all first-time felony nonviolent drug offenders and all misdemeanor nonviolent drug offenders to rehabilitative treatment programs. Provides conditions of such assignment and conditions for subsequent prosecution. Provides for an annual accountability and evaluation study. See bill for details.