

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 281 w/CS Substance Abuse Treatment and Intervention

**SPONSOR(S):** Adams, and others

**TIED BILLS:** none

**IDEN./SIM. BILLS:** CS/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	7 Y, 0 N	Bond	Everhart
5) Judicial Appropriations (Sub)			
6) Appropriations			

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### SUMMARY ANALYSIS

Cases dealing with abused and neglected children are referred to dependency court. This bill authorizes a dependency court to order individuals involved in a dependency court case to be evaluated for drug or alcohol problems, and allows the court to refer an addicted individual to treatment as a condition of placement of the child with such individual.

This bill also modifies laws regarding drug court programs, applicable to both adult and minor criminal offenders, to provide for post-adjudicatory and community supervision of offenders. In addition, this bill requires each of the 20 judicial circuits to establish at least one employee to act as the drug court coordinator.

This fiscal impact to state and local governments of this bill is unclear. See Fiscal Analysis & Economic Impact Statement.

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

**STORAGE NAME:** h0281e.sa.doc

**DATE:** March 31, 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 checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |

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

This bill expands the drug court system to the juvenile dependency court system, and authorizes courts to order evaluations and to order treatment.

This bill authorizes additional court committees at the local level.

This bill does not encourage personal responsibility without government interference, as this bill provides for court-ordered evaluation and treatment of addictions, and court-monitored compliance with such orders.

This bill potentially places an additional governmental impediment to reunification of a troubled family.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Court Proceedings Related to Minors

There are two main court systems specifically tailored for minors. Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker or caretakers. Delinquency court is for minors who commit crimes that do not warrant transfer to the adult criminal justice system.

##### 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 reported that a majority of the offenders being incarcerated due to drug-related crimes 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 were 85 operational and eight planned drug courts in Florida. They are categorized as follows:

- Adult drug courts - 42 operational and 2 planned,
- Juvenile (delinquency) drug courts - 25 operational and 3 planned,

<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.*

- Dependency drug courts - 16 operational and 3 planned, and
- Reentry<sup>4</sup> drug courts: - 2 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>

## **Effect of Bill**

### Dependency Court

This bill expands existing legislative intent applicable to ch. 39, F.S. (dependency court), to add the legislative intent that the drug court model should be utilized for persons involved in the dependency court system. The intent encourages courts to support the drug court program model by assessing caretakers 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 a dependency court to order an individual involved in a dependency proceeding to submit to substance abuse assessment or evaluation upon a showing of good cause. An assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311, F.S.<sup>9</sup> The court may require an individual 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. The court must oversee the progress and compliance with treatment and must 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.

### Drug Court Programs

Drug court programs typically provide services and monitoring in the pretrial stage. The programs can do this by extending the pretrial stage, and using the threat of a criminal prosecution and conviction as a means to encourage compliance. This bill provides that, in addition to pretrial intervention programs, treatment-based drug court programs may include convicted offenders, offenders who are on involved in "postadjudicatory programs", and "offenders who transfer from jail or a prison-based treatment program into the community."

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<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.

<sup>9</sup> Section 397.311(24), F.S., defines "qualified professional" to mean "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."

This bill requires that, contingent upon an annual appropriation, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program within the state courts system.

This bill also provides that the chief judge of each judicial circuit may appoint an advisory committee for the treatment-based drug court program. The committee is 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.

Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have his or her 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 must accept a plea of nolo contendere. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case.

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. This bill does not affect a state revenue source.

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:

This bill may increase use of private drug assessment and treatment programs.

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 Revision 7 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>10</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.

Committee on State Administration Fiscal Comments

The State Courts Administrator asserts that the costs of evaluation of individuals ordered by a dependency court would be "therapeutic", and therefore not paid by the state under s. 29.004(10), F.S., as it is effective on July 1, 2004. However, that section is one applicable to "case management services". Section 29.004(6), F.S., also effective July 1, 2004, provides that the state will be responsible for "expert witnesses not requested by any party which are appointed by the court pursuant to an express grant of statutory authority." The only use of an

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

assessment in the court would be for the assessor to become an expert witness testifying to the court about whether the individual has a substance abuse problem, and, if so, what is the appropriate treatment.

The State Courts Administrator also asserts that this bill will have no fiscal impact as it only applies to counties that have elected to create, at county expense, a drug court program. However, the provisions in sections 2, 3, 4, and 5, which provide for court referral to a substance abuse assessment, are not contingent upon whether the county has elected to create a drug court program.

It appears that the assessments provided for in sections 2-5 of this bill may require state payment of the assessment should the individual be declared indigent. It is unknown how many substance abuse assessments would likely be ordered should this bill be enacted. In FY 2002-2003, there were 16,215 dependency cases filed.<sup>11</sup>

### 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>

Section 7 of this bill provides that offenders who are "postadjudicatory" may be referred to drug court for assessment and treatment of addictions. The ex post facto and double jeopardy clauses may prohibit a court from compelling such a referral for an offender whose offense was committed prior to the effective date of this bill.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

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<sup>11</sup> Trial Court Statistical Reference Guide, published by the Office of State Courts Administrator.

<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.

#### **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 a court is overseeing the progress and compliance with treatment by a child or the child’s parent, legal custodian, caregiver, or other person requesting custody of the child, the court may impose appropriate available sanctions for noncompliance against the child as well as against 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.