

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 316

SPONSOR: Appropriations Subcommittee on Article V Implementation and Judiciary, Committee on Children and Families and Senator Lynn

SUBJECT: Substance Abuse Treatment Intervention

DATE: March 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.	Brown	Lang	JU	Favorable
3.	Martin	Martin	AAV	Fav/CS
4.			AP	
5.				
6.				

I. Summary:

This committee substitute for SB 316 allows the court, at a dependency shelter hearing, adjudicatory hearing, or upon judicial review of a case plan for a parent, to order a substance abuse assessment of a child or the child’s parent, caregiver, legal custodian, or other person requesting custody of the child. The court may require participation in substance abuse treatment services when appropriate and available, including treatment-based drug court programs.

This committee substitute specifies that with the approval of the state attorney, a defendant (child or adult) assessed with a substance abuse problem who is charged for the first time with a nonviolent third-degree felony and who has not previously been adjudicated of a felony, or is charged with a second or subsequent nonviolent third-degree felony may be referred to a pretrial substance abuse education and treatment intervention program. Upon completion of the program, the defendant is entitled to dismissal of the pending charge involving a nonviolent third-degree felony.

Subject to annual appropriation, this committee substitute requires each judicial circuit to establish at least one coordinator position for the treatment-based drug court program within the state court system, and authorizes the court to appoint an advisory committee.

This committee substitute also revises language allowing for the transfer of a case involved in the drug court treatment program to a different county.

This committee substitute substantially amends sections 39.001, 39.402, 39.407, 39.507, 39.521, 39.701, 397.334, 910.035, 948.08, and 985.306, of the Florida Statutes.

II. Present Situation:

Chapter 39 Provisions

Chapter 39, F.S., governs proceedings relating to children, including those for detention, dependency, protective investigations, custody, permanency (such as adoption), appointments of guardian advocates, and termination of parental rights. Chapter 39, F.S., incorporates the due process provisions contained in the Florida Rules of Juvenile Procedure (F.R.J.P.), such as those requiring a hearing for children and parents, the opportunity to be heard, and the right to counsel, including appointed counsel.¹

Section 39.402, F.S., contains provisions regarding shelter placement. Under this section, a child cannot be placed in a shelter before a court hearing unless, upon a showing of probable cause, the child has been or is in imminent danger or injury from abuse, neglect, or abandonment; the parent or legal custodian is in material violation of a condition of placement imposed by the court; or the child has no parent, legal custodian or other caretaker. s. 39.402(1), F.S. Upon taking a child into custody, the Department of Children and Family Services (Department) must immediately notify the parents or legal custodians, provide them with a summary of procedures statement, and notify them that they have the right to obtain their own attorney. s. 39.402(3), F.S. Parents or legal custodians are also required to be given notice of the hearing, as well as written notice that they will have an opportunity to be heard, present evidence, and be represented by counsel or appointed counsel if indigent. s. 39.402(5), F.S. At the shelter hearing and at every hearing or proceeding subsequent, the parents must be informed of their right to counsel, or appointed counsel. s. 39.402(8), F.S.

The Department must provide to the court a statement of whether the parent or legal custodian is alleged to have committed any acts listed as grounds for expedited termination of parental rights, warranted by conduct, including but not limited to, the following:

“When the parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child....

As used in this subsection, the term “egregious conduct” means abuse, abandonment, neglect, or any other conduct of the parent or parents that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.” s. 39.806(1)(f), F.S.

Parental participation in voluntary services, as referred by the Department, shall not be deemed an admission of the allegations in the shelter petition. s. 39.402(15), F.S.

Current law authorizes the court to order a physical or mental examination by a qualified professional, upon good cause and in accordance with Rule 8.675, F.R.J.P., whenever the mental or physical condition of a parent or legal custodian is controverted. s. 39.407(14), F.S. No

¹ See Rules 8.290 - 8.695, F.R.J.P.

requirement exists in ch. 39, F.S., for a child or the child's parent, caregiver, legal custodian, or other person requesting custody of the child to be evaluated for substance abuse problems.

Substance Abuse

In January, 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.² CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly \$10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997. In connection with the report, CASA conducted a national survey of family court and child welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases. The survey revealed the following:

- 71.6 percent of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.
- Almost 80 percent of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while nearly 40 percent stated that substance abuse was a factor in over 75 percent of cases.
- 75.7 percent of respondents believed that children of substance abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42 percent of all caseworkers reported that they were either not required or uncertain if they were required to report substance abuse when investigating child abuse and neglect cases.

In April, 1999, the Department of Health and Human Services issued a report to Congress which highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care. It stated that children in substance abusing households were more likely than others to be served in foster care, spent longer periods of time in foster care than other children, and were less likely to have left foster care within a year.

Drug Court

Section 397.334, F.S., authorizes the use of county funding to share resources and the responsibilities associated with the 85 treatment-based drug court programs. Treatment-based drug court programs attempt to integrate judicial supervision, treatment, accountability, and sanctions to reduce recidivism in drug-related crimes. Each judicial circuit is directed to establish a model of a drug court program and currently each of the 20 judicial circuits have drug court programs in place. The program may be established in misdemeanor, felony, family, or other court divisions. The intent of the Legislature, as stated in s. 397.334(1), F.S., is to encourage other state agencies to support the creation and establishment of the drug court programs.

² "No Safe Haven: Children of Substance-Abusing Parents," January 1999

Treatment-based drug court programs may include pre-trial intervention programs as provided for in ss. 948.08, 948.16, and 985.306, F.S.

Adult Pretrial Intervention

Section 948.08(6), F.S., allows defendants charged with certain drug purchase or possession felonies, prostitution, or tampering with evidence to be admitted into pretrial intervention programs if the defendant has not previously been convicted of a felony and has not previously been referred to pretrial intervention. If the state attorney establishes, by a preponderance of the evidence, that the defendant was involved in dealing or selling drugs, the court must deny admission into the pretrial intervention program. If the defendant successfully completes the program, the case is dismissed. If the defendant does not complete the program, the prosecution proceeds.

Section 910.035, F.S., relates to transfer orders for a defendant out of county. This section provides for transfer to a drug court program in another county. s. 910.035(5), F.S.

Delinquency Pretrial Intervention

Section 985.306, F.S., provides for a pretrial intervention program in the juvenile justice system. To the extent that funds are available, a child who is charged under ch. 893, F.S., with a felony of the second or third degree for purchase or possession of a controlled substance and who has not previously been adjudicated for a felony nor been admitted to a delinquency pretrial intervention program is eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program for at least a year when approved by the chief judge or alternative sanctions coordinator of the circuit.

III. Effect of Proposed Changes:

Dependency Court – Referrals to Drug Court

This committee substitute amends s. 39.001, F.S., to recognize that substance abuse is a primary cause of child abuse and neglect and that early referral and comprehensive treatment are cost effective and can help combat substance abuse problems in families. This committee substitute provides that the Legislature recognizes that treatment-based drug court programs greatly increase the effectiveness of substance abuse treatment and reduce instances of child abuse and neglect. This committee substitute specifies certain goals identified by the family safety program, and the substance abuse treatment program within the Department of Children and Family Services. This committee substitute also specifies that treatment may be required by the court following adjudication. This committee substitute provides that children and parents should be evaluated for substance abuse problems early in the assessment process and that participation in treatment, including a treatment-based drug court program, may be court-required following an adjudication of dependency.

This committee substitute amends s. 39.402, F.S., authorizing the court, at a shelter hearing, to order a child or his or her parents, caregiver, legal custodian, or the person requesting custody of the child to submit to a substance abuse assessment, upon good cause and in accordance with the

Rules of Juvenile Procedure. The assessment must be conducted by a qualified professional as defined in s. 397.311, F.S.³

This committee substitute amends s. 39.507, F.S., to specify that at the adjudicatory hearing for dependency, the court may require persons to participate in substance abuse treatment services when it is appropriate and services are available, including participation and compliance with a treatment-based drug court program. This committee substitute states that the court, including the treatment-based drug court program, shall oversee the progress and compliance with treatment by the child or the child's parents, legal custodian, caregiver, or other persons requesting custody of the child and shall impose appropriate available sanctions for noncompliance.

Likewise, s. 39.521, F.S., is amended to specifically authorize the court to require a person to participate in substance abuse assessment and treatment, and to impose sanctions for non-compliance.

Section 39.701, F.S., is amended to allow the court to extend the time limitation of the case plan or modify the terms of the plan which may include a requirement that the parent, foster parent, or legal custodian participate in treatment-based drug court programs. This provision will allow for case closures to be completed in accordance with time frames that may be necessary for the person seeking to obtain child custody to successfully complete a substance abuse treatment program.

Drug Court

This committee substitute deletes the provision in s. 985.306, F.S., that permits the chief judge in each circuit to appoint an advisory committee for the delinquency pretrial intervention program. Section 397.334(7), F.S., is amended to authorize the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program and specifies that the composition of the committee shall consist of the chief judge, who shall also serve as chair, the judge of the treatment-based drug court program, the state attorney, public defender, treatment-based drug court program coordinators, community representatives, including representatives from the community treatment program, and any other persons the chair deems appropriate. The chief judge, judge of the treatment-based court program, state attorney, and public defender may each name a designee to serve on the committee.

Section 910.035, F.S., is amended to revise language with respect to conditions for transferring the cases of defendants involved in the drug treatment program. Trial courts are directed to accept a plea of nolo contendere when a transfer to another county is approved by all parties. Additionally, the court to which the case is transferred may close the case either successfully or unsuccessfully based upon program completion. If the defendant does not complete the program successfully, the case is to be disposed of within the guidelines of the Criminal Punishment Code.

³ A 'qualified professional' includes both licensed physicians and persons who hold a minimum of a bachelor's degree and are certified through a department-recognized certification process for substance abuse treatment services. s. 397.311(24), F.S.

This committee substitute requires, subject to annual appropriation, each judicial circuit to establish at least one coordinator position for the treatment-based drug court program within the state court system to coordinate the responsibilities of the participating agencies and service providers. The provisions for a coordinator position made by this committee substitute are supported in ch. 29.004, F.S., effective July 1, 2004, (implementing Article V) that indicates one of the elements of the state courts system that is to be provided by state revenues is the service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334, F.S.

Adult Pretrial Intervention

This committee substitute amends s. 948.08, F.S., to allow a defendant assessed with a substance abuse problem who is charged for the first time with a nonviolent third-degree felony and a defendant assessed with a substance abuse problem who has not previously been convicted of a nonviolent third-degree felony to be referred to a pretrial substance abuse education and treatment intervention program with the approval of the state attorney. A defendant who was previously offered admission to and rejected that offer may no longer be denied access to such a program by the state attorney; a decision for denial must be made by the courts. Upon completion of the program the defendant is entitled to dismissal of the pending charge involving a nonviolent third-degree felony. This section of the committee substitute expands the number of adults who are eligible for pretrial intervention.

Delinquency Pretrial Intervention

This committee substitute amends s. 985.306, F.S., to allow juveniles charged with a misdemeanor or tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud, who have not previously been adjudicated with a felony to be admitted into a delinquency pretrial substance abuse education and treatment intervention program. This committee substitute allows those juveniles who have previously participated in pretrial intervention to be admitted again.

This committee substitute also allows juveniles assessed with a substance abuse problem and charged with a first-time nonviolent third degree felony, as well as those who have been charged with a second or subsequent nonviolent third degree felony, to enter the pretrial intervention program with the approval of the state attorney.

This committee substitute increases the number of juveniles who are eligible to participate in pre-trial intervention which may create strain on the current system as well as result in increased costs.

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:

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 appears that the person administering the examination would be considered a psychotherapist for purposes of the psychotherapist and patient privilege, it also appears that no such privilege exists for court-ordered examinations such as these. s. 90.503(4)(c), F.S. Therefore, without clarification that statements made during the substance abuse assessment are to be used only for the purpose of this proceeding, it is unknown whether this could potentially raise a constitutional self-incrimination challenge.⁴

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute may have a fiscal impact on children and their families for whom the court orders substance abuse assessment and treatment services, in that they are required to contribute pursuant to s. 397.431(2), F.S.

Private insurance companies could potentially be affected if additional persons are referred for treatment.

Treatment and community providers may experience an increase in the number of persons receiving services if additional persons are referred to treatment and other types of services under this proposal.

C. Government Sector Impact:

The Department of Children and Families has indicated there will be no fiscal impact as a result of this committee substitute.

⁴ The custodial role that limited a mother's ability to invoke the privilege against self-incrimination where her action was compelled could limit the state from using testimonial aspects both directly and indirectly in future criminal proceedings, *Baltimore City Dept. of Social Services v. Bouknight*, 110 S.Ct. 900; 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).

Authorizing increased judicial oversight may result in an increase in the number and frequency of substance abuse assessments. It is not possible to determine whether there will be a fiscal impact as the language is permissive and it is unknown whether additional assessments will be conducted. Therefore, it is unknown whether there will be additional costs to be incurred, as the court will have discretion regarding the assessments and any admissions to the program.

No data is available from the Department of Juvenile Justice to determine the number of juveniles who may qualify for pretrial intervention under the new criteria established in this committee substitute.

The Department of Corrections indicates that Pretrial Intervention is the smallest entity within its Office of Community Corrections, consisting of 63 officers. As of February 1, 2003, the average caseload for those officers was 124:1.

Concerns exist that expanding the number of eligible Pretrial Intervention participants to include offenders who have previously been convicted of felony offenses or who have previously rejected the offer of Pretrial Intervention will place a burden on existing resources. However, this is not expected to result in a fiscal impact as the committee substitute is permissive and participation in a drug court program is not mandated where funds do not exist.

All 20 judicial circuits have at least one drug court coordinator or a position fulfilling the function of a coordinator so there should be no fiscal impact based upon this provision. However, the language does allow additional coordinators to be requested and funded with legislative approval.

The chief judge in each judicial circuit is currently authorized in statute to appoint an advisory committee. Moving the authorizing language will not result in any additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This committee substitute provides that, should a participant not succeed in the drug court program, “the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Punishment Code.” It is uncertain whether the intent is to transfer the case back for trial or to dismiss the case.

VIII. Amendments:

None.