

# 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/SB 316  
SPONSOR: Committee on Children and Families and Senator Lynn  
SUBJECT: Substance abuse treatment intervention  
DATE: January 13, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute for SB 316 allows the court, at the dependency shelter hearing or adjudicatory hearing, 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 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.

Further, the 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 or who has previously been convicted of a nonviolent third-degree felony and 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.

This committee substitute revises language allowing for the transfer of a case involved in the drug court treatment program to a different county. The county receiving the transfer is authorized to dispose of the case upon successful or unsuccessful completion of the program.

The committee substitute states that based upon an annual appropriation, each judicial circuit must 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.

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:**

### ***Dependency Court***

There is currently no requirement 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. However, the National Drug Court Institute and a growing amount of the professional literature report that there is a significant link between child maltreatment and substance abuse. Studies suggest that 80 percent of substantiated child abuse cases involve parents who are involved with alcohol or other drugs. State substance abuse data indicates that four out of every five persons needing substance abuse treatment are also involved in the criminal justice system. Many parents whose children are under the custody or supervision of the state due to abuse or neglect have significant substance abuse problems that contribute to family instability and domestic violence.

In April, 1999, the Department of Health and Human Services made 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 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. Treatment-based drug court programs may include pre-trial intervention programs as provided for in section 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.

***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 no less than 1 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***

The committee substitute for SB 316 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. The committee substitute provides that the Legislature also recognizes that treatment-based drug court programs that integrate judicial supervision, treatment, accountability, sanctions, and community support greatly increase the effectiveness of substance abuse treatment and reduce the number of cases of child abuse and neglect. The committee substitute specifies goals identified by the family safety program and the substance abuse program within the Department of Children and Family Services (department) such as ensuring safety of children, preventing and remediating the consequences of substance abuse on families involved in protective supervision or foster care, and supporting families in recovery. The committee substitute also specifies that treatment may be required by the court following adjudication.

The committee substitute states 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 required by the court following adjudication of dependency.

The committee substitute amends s. 39.402, F.S., authorizing the court 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. The substance abuse assessment may be ordered at the shelter hearing or at any time after a shelter petition or petition for dependency is filed. The court order may be made only upon good cause in accordance with the Rules of Juvenile Procedure. The substance abuse assessment must be conducted by a qualified professional as defined in s. 397.311, F.S. This language further strengthens the court's ability to identify and address substance abuse problems during the dependency process.

The 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. The 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.

Sections 39.507 and 39.521, F.S., are amended to strengthen language relating to the judge's ability to require a person to engage in substance abuse assessment and treatment or treatment-based drug court when appropriate and impose sanctions for non-compliance. The successful completion of a substance abuse treatment program may be correlated with a sound custody decision.

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 section 985.306, F.S., permitting the chief judge in each circuit to appoint an advisory committee for the delinquency pretrial intervention program. The concept of an advisory committee is added to s. 397.334(7), F.S., which authorizes 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; the public defender; the treatment-based drug court program coordinators; community representatives, including representatives from the community treatment program; and any other persons the chair finds to be appropriate. The chief judge, judge of the treatment-based court program, state attorney and the 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.

The language in this committee substitute will help to expedite the timely closure of drug court cases by allowing cases to be transferred to another area and closed in that area. This process reduces the paperwork and time associated with transferring a case back and forth between circuits for closure or possible trial.

The committee substitute states 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 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., (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.

***Adult Pretrial Intervention***

The 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 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***

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

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

The 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:

**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 with private health insurance who are in the child protection system and for whom the court orders substance abuse assessment and treatment services.

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.

The language strengthening 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.

There is no data 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 the 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.

There is some concern 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:**

None.

**VIII. Amendments:**

None.

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

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