

By Senator Miller

18-746-04

1                                   A bill to be entitled  
2           An act relating to substance abuse; creating s.  
3           948.201, F.S.; providing a short title;  
4           providing findings and purpose; providing  
5           definitions; providing for assignment of  
6           certain nonviolent drug offenders to  
7           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 for  
13          severability; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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17           Section 1. Section 948.201, Florida Statutes, is  
18 created to read:

19           948.201 Substance abuse and crime prevention.--

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

22           (2) FINDINGS AND PURPOSE.--

23           (a) The Legislature finds that:

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

29           2. When nonviolent persons convicted of drug  
30 possession or drug use are provided appropriate  
31 community-based treatment instead of incarceration,

1 communities are healthier and safer, while taxpayer dollars  
2 are saved.

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

11 (b) The purpose of this section is to enhance public  
12 safety by reducing drug-related crime and preserving jail and  
13 prison cells for serious and violent offenders, to improve  
14 public health by reducing drug abuse and drug dependence  
15 through proven and effective drug treatment strategies, and to  
16 halt the wasteful expenditure of hundreds of millions of  
17 dollars each year on the incarceration and reincarceration of  
18 nonviolent drug offenders who would be better placed in  
19 community-based treatment.

20 (3) DEFINITIONS.--As used in this section, the term:

21 (a) "Rehabilitative treatment program" means the least  
22 restrictive rehabilitative treatment program available, as  
23 determined by clinical assessment. Such a program must include  
24 drug treatment provided by a certified community drug  
25 treatment program. Such a program may include one or more of  
26 the following: outpatient treatment; halfway house treatment;  
27 narcotic replacement therapy; drug education or prevention  
28 courses; inpatient or residential drug treatment as needed to  
29 address special detoxification or relapse situations or severe  
30 dependence; vocational training; family counseling; literacy  
31 training; or community service.

1           (b) "Nonviolent drug offense" means an offense  
2 involving the possession or sale of a controlled substance, as  
3 defined in s. 893.02, which offense did not involve the use,  
4 attempted use, or threatened use of physical force against  
5 another person.

6           (4) APPROPRIATE ASSIGNMENT OF NONVIOLENT DRUG  
7 OFFENDERS.--

8           (a) After arraignment, the court shall direct that a  
9 clinical assessment be performed of any person charged with a  
10 nonviolent drug offense, with the consent of the person  
11 arrested. Such clinical assessment shall form the basis for  
12 all orders pursuant to this section.

13           (b) There shall be a presumption that any person who  
14 would otherwise be arraigned for a nonviolent drug offense for  
15 the first time shall, prior to the entry of a guilty plea, be  
16 ordered by the court to participate in and complete a  
17 rehabilitative treatment program. This section applies to all  
18 first-time nonviolent drug offenders.

19           (c) Paragraph (b) does not apply to any person who:

20           1. Has been convicted within the previous 5 years for  
21 a felony involving the use or threatened use of physical force  
22 against another person.

23           2. In addition to the conviction for the nonviolent  
24 drug offense, has been charged or convicted in the same  
25 proceeding for a felony not related to the use of drugs.

26           3. Refuses participation in a rehabilitative treatment  
27 program.

28           4. Has two separate convictions for nonviolent drug  
29 offenses, has participated in two separate courses of  
30 rehabilitative treatment under this section, and is found by  
31

1 the court by clear and convincing evidence to be unsuitable  
2 for any available form of rehabilitative treatment.

3 (d) If, during the course of rehabilitative treatment,  
4 the treatment provider determines that the defendant is  
5 unsuitable for the treatment being provided, but may be  
6 suitable for other rehabilitative treatment programs, the  
7 court may modify the terms of its order to ensure that the  
8 person receives the alternative treatment or program.

9 (e) This section does not preclude a defendant from  
10 declining to participate in a rehabilitative treatment  
11 program. A person who declines such participation shall be  
12 prosecuted and sentenced in accordance with otherwise  
13 applicable provisions of the criminal code.

14 (5) SUBSEQUENT PROSECUTION.--

15 (a) When any person participating in a rehabilitative  
16 treatment program pursuant to subsection (4) is arrested for  
17 an offense other than a nonviolent drug offense or violates a  
18 non-drug-related condition of the order subjecting the person  
19 to a rehabilitative treatment program or non-drug-related  
20 condition of probation, the state attorney may move to proceed  
21 with prosecution, at which time the court shall conduct a  
22 hearing. If the alleged violation is proved, the court may  
23 modify its order or the conditions of probation or may direct  
24 prosecution to proceed.

25 (b) When any person participating in a rehabilitative  
26 treatment program pursuant to subsection (4) is arrested for a  
27 nonviolent drug offense or violates a drug-related condition  
28 of the order subjecting the person to a rehabilitative  
29 treatment program or a drug-related condition of probation,  
30 the state attorney may move to proceed with prosecution, and  
31 the court shall conduct a hearing. If the alleged violation is

1 proved and the state proves by clear and convincing evidence  
2 that such person poses a danger to the safety of other  
3 persons, the court may order that the prosecution proceed.  
4 Otherwise, the court may order that the rehabilitative  
5 treatment program be intensified or modified.

6 (c) When the court directs that the prosecution  
7 proceed, the person who has failed to successfully complete a  
8 rehabilitative treatment program pursuant to this section may  
9 not receive a sentence that exceeds the sentence to which the  
10 person would have been subject had the person declined to  
11 participate in the rehabilitative treatment program.

12 (d) When the court directs that the prosecution of a  
13 first-time nonviolent drug offender proceed because the person  
14 has failed to successfully complete a rehabilitative treatment  
15 program pursuant to this section, notwithstanding any other  
16 law, the trial court may not sentence such defendant to a term  
17 that exceeds 30 days in jail.

18 (e) When a defendant has two separate convictions for  
19 a nonviolent drug offense, has participated in two separate  
20 courses of drug treatment, and is found by the court by clear  
21 and convincing evidence to be unsuitable for any available  
22 form of drug treatment, the defendant is not eligible for  
23 continued probation under subsection (4). Notwithstanding any  
24 other law, the court may not sentence such defendant to a term  
25 that exceeds 90 days in jail.

26 (f) At any time after completing treatment, a  
27 defendant subject to paragraph (4)(b) may petition the court  
28 for dismissal of the charges. If the court finds that the  
29 defendant has successfully completed the prescribed course of  
30 treatment and substantially complied with the conditions of  
31 probation, the charges against the defendant shall be

1 dismissed and the court record sealed in accordance with s.  
2 943.059.

3 (6) ANNUAL ACCOUNTABILITY AND EVALUATION STUDY.--The  
4 department shall annually evaluate the effectiveness and  
5 financial impact of the programs that are funded pursuant to  
6 this section. The department's review must include, but need  
7 not be limited to, the implementation process, incarceration  
8 costs, crime rates, prison and jail construction, welfare  
9 costs, the adequacy of funds appropriated, and any other  
10 impacts or issues the department identifies.

11 (7) APPLICABILITY TO OTHER PROVISIONS OF LAW.--The  
12 provisions of this section shall control over any conflicting  
13 provision of law, including any conflicting provision of s.  
14 397.334, s. 910.035(5), s. 948.01(13), s. 948.034, s. 948.08,  
15 s. 948.16, or s. 985.306.

16 Section 2. If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 invalidity does not affect other provisions or applications of  
19 the act which can be given effect without the invalid  
20 provision or application, and to this end the provisions of  
21 this act are severable.

22 Section 3. This act shall take effect July 1, 2004.

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25 SENATE SUMMARY

26 Creates the "Substance Abuse and Crime Prevention Act."  
27 Requires that a first-time nonviolent drug offender be  
28 assigned to a rehabilitative treatment program. Provides  
29 conditions of such assignment. Provides for subsequent  
30 prosecution if the offender is arrested for drug  
31 possession or violates a condition of probation. Requires  
the Department of Corrections to conduct an annual  
accountability and evaluation study. (See bill for  
details.)