

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 177 CS Drug Court Programs
SPONSOR(S): Adams, and others
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 184 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Bond	Kramer
2) Juvenile Justice Committee	6 Y, 0 N, w/CS	Whittier	White
3) Justice Appropriations Committee	9 Y, 0 N, w/CS	DeBeaugrine	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

The term "drug court" refers to court programs that specialize in cases where alcohol or drug addiction has led a person into trouble with the law.

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker or caretakers. 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 individual to dependency drug court for monitoring and treatment after a finding of dependency. Individuals may voluntarily enter drug court prior to a finding of dependency. This bill allows incarceration of persons referred to dependency drug court who fail to comply with the conditions of the referral.

This bill also modifies laws regarding drug court programs for adult and juvenile criminal offenders. Currently, those programs are primarily structured as pre-trial diversion programs. This bill provides for post-adjudicatory and community supervision drug court referrals. Drug courts have traditionally used sanctions, including short terms of incarceration, as punishment for participants who violate terms of their treatment plan; however, a recent court ruling found that such incarceration for persons in a pre-adjudicatory drug court program is not authorized by law. This bill provides for incarceration of a person violating his or her treatment plan ordered by a drug court or as part of a pre-trial intervention program, which incarceration is in addition to any term of incarceration that may be ordered should the person leave drug court and then be convicted of the offense. Participation in a drug court prior to adjudication or a pre-trial intervention program is voluntary. The bill further requires that participants acknowledge in writing that they wish to enter the program and understand the program requirements and sanctions for non-compliance.

This fiscal impact to state and local governments of this bill is unknown. Since the bill requires incarceration and jail-based treatment, the bill would appear to require counties to expend funds and would fall under the mandates provisions of Article VII, Section 18 of the Florida Constitution. Since the bill deals with criminal laws, however, the bill would appear to be exempt from this section. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. -- The bill authorizes the court to order a substance abuse assessment and evaluation after a shelter petition or dependency petition has been filed for individuals involved in the case. The bill provides that an individual involved in a dependency proceeding can be ordered into a drug court. The bill expands the scope of drug court programs beyond pre-trial intervention programs for criminal defendants as currently authorized in s. 397.334(3), F.S. The expanded scope of these programs would include dependency drug court, post-adjudicatory programs, the monitoring of sentenced offenders, and supervision of offenders who transfer from a jail or prison based treatment program into the community. This bill provides for incarceration of individuals who violate drug court terms and conditions even if they have not been convicted of a crime.

According to representatives of the courts, many of the new activities authorized by this bill are already being undertaken under more generic authority provided to the court. For instance, the court is already authorized in s. 39.407, F.S. to order physical and mental health evaluations of a parent. Some judges order substance abuse assessments and evaluations under this authority. Courts also have the authority to order criminal offenders to probation and have the authority to set special conditions such as compliance with a substance abuse treatment program.

Promote personal responsibility. -- This bill provides for court-ordered evaluations, substance abuse treatment and court-monitored compliance with such orders. Sanctions are authorized for individuals who do not comply with court orders.

Empower families. -- This bill provides increased court responsibilities in dependency court matters

B. EFFECT OF PROPOSED CHANGES:

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.

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.¹ 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.

¹ "No Safe Haven: Children of Substance-Abusing Parents," January 1999.

- 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 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.² 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.”³ 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.⁴

Currently, 88 drug courts operate in 43 counties,⁵ in all but one judicial circuit.⁶ There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.⁷

In 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced recidivism rate,⁸ and that drug courts are a cost-effective alternative to incarceration of drug offenders.⁹

Drug courts operate on a reward and punishment system.¹⁰ The reward for successful completion of the program is not only a better life, but also lowering of a criminal charge to a lesser offense, or even dismissal of the criminal charge. The punishment is typically jail time for failing to comply with the program, plus continuation of the criminal process and possible additional jail time upon conviction. Recently, a district court ruled that a drug court participant cannot be separately jailed for violating the terms of the drug court program, and then tried and convicted for the underlying criminal offense.¹¹

² Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p. 1.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Report on Florida’s Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, at page 5.

⁶ The 3rd judicial circuit currently does not have an operational drug court, but has one in the planning stage.

⁷ *Report on Florida’s Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, at page 5.

⁸ *The Florida Drug Court System*, revised January 2004, at page 4.

⁹ *Report on Florida’s Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, at page 5.

¹⁰ In colloquial terms, they operate a “carrot and stick”.

¹¹ *Diaz v. State*, 884 So.2d 299 (Fla. 4th DCA 2004).

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 statement 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 a child, and any person who has custody or is requesting custody of a child 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.¹² After a finding of dependency, 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. Prior to a finding of dependency, participation in a treatment, including a treatment-based drug court program is voluntary. The court must oversee the progress and compliance with treatment and must impose appropriate available sanctions for noncompliance upon the person participating in a dependency drug court program.

The appropriate available sanctions for noncompliance could include citation for contempt of court, for which a person may be incarcerated for up to 6 months.

Drug Court Programs

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. 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 serve individuals in the dependency process, convicted offenders, individuals who are involved in "postadjudicatory programs", and "offenders who transfer from jail or a prison-based treatment program into the community."

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.¹³

This bill also moves the provision regarding appointment of an advisory committee to develop and oversee a treatment-based drug court program.

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

¹² 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."

¹³ These positions were established in prior budgets, and are currently staffed and funded.

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.

This bill provides that sanctions for violation of the treatment required by a drug court or other pre-trial intervention program may include incarceration separate from the term of incarceration that may be imposed upon conviction of the crime.¹⁴ The term of incarceration is limited to the term available for contempt of court, which is 6 months for adults. For juveniles, the term of incarceration in a secure detention facility is 5 days for a first violation and 15 days for a subsequent violation.

The bill requires that any person entering a pre-trial intervention program or a treatment-based drug court must be advised of the program requirements and sanctions prior to entering the program. In addition, the individual must agree in writing that he or she is aware of the requirements and possible sanctions and wishes to participate.

C. SECTION DIRECTORY:

Section 1 amends s. 39.001, F.S., relating to substance abuse services in proceedings relating to children, to add legislative intent.

Section 2 amends s. 39.407, F.S., to provide that a court may order a substance abuse assessment or evaluation at any point after a shelter or dependency petition has been filed.

Section 3 amends s. 39.507, F.S., to provide that a court may order a substance abuse assessment or evaluation after a finding of dependency and that the court may supervise compliance with treatment.

Section 4 amends s. 39.521, F.S., to provide that a court may order a substance abuse assessment or evaluation if a child has been adjudicated dependent and to participate in a treatment program including a treatment-based drug court.

Section 5 amends s. 39.701, F.S., to provide that a court may modify a dependency case plan to add a referral of a caregiver to a drug court program.

Section 6 amends s. 397.334, F.S., to expand treatment-based drug court program options.

Section 7 amends s. 910.035, F.S., relating to transfers from county for pleas and sentencing.

Section 8 amends s. 948.08, F.S., to provide that entry into a felony pretrial intervention program, including treatment-based drug courts, is voluntary and to require a protocol of sanctions for these programs.

Section 9 amends s. 948.46, F.S., to provide that entry into a misdemeanor pretrial intervention program, including a treatment-based drug court program, is voluntary and to require a protocol of sanctions for these programs.

Section 10 amends s. 985.306, F.S., to provide that entry into a delinquency pretrial intervention program, including a treatment-based drug court program, is voluntary and to require a protocol of sanctions for these programs. Also expands the list of crimes for which an offender is eligible for participation in a delinquency pretrial intervention program.

Section 11 provides an effective date of upon becoming law.

¹⁴ This would have the effect of overruling the effect of the decision in *Diaz v. State*, 884 So.2d 299 (Fla. 4th DCA 2004). Note that the court in that case suggested that the Legislature make this change.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Counties are allowed, but not required, to establish drug courts. The bill, however, requires the court to include a protocol of sanctions for individuals in pre-trial intervention programs which are authorized for all counties. The protocol of sanctions must include jail-based treatment programs and incarceration for non-compliance of up to 6 months. These two sanctions would result in costs to the counties. There are no data available to estimate the number of individuals that would be incarcerated under the provisions of the bill and whether there would be increased numbers of individuals affected than by current practices. It should be noted, however, that pre-trial intervention programs are already authorized in law and are designed to reduce jail populations and associated costs. Thus, pre-trial intervention programs are generally perceived as providing a financial benefit to counties.

In addition, the Department of Juvenile Justice states that the bill would increase the number of youth eligible for secure detention due to sanctions required by the bill. The department estimates that 1,266 youth will be subject to a 5 day sanction for a first violation and 326 youth will be subject to a 15 day sanction for a second violation. The department estimates that this will result in 11,220 additional bed days being utilized in secure detention. At current per diem rates for secure detention, this represents expenditures of \$1.2 million per year. Since pre-adjudication costs for secure detention will become a county responsibility on July 1, 2005, it is presumed that the counties will be responsible for these costs.

There are no data on file from any counties or the Florida Association of Counties concerning the fiscal impact of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase use of private drug assessment and treatment programs. Individuals are often required to pay for services ordered through drug courts.

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 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."¹⁵ 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 Criminal Justice 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. However, that section is one applicable to "case management services". Section 29.004(6), F.S., 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." If a finding is made that an assessment is not therapeutic, but only explores whether therapeutic services are necessary, then s. 29.004(10), F.S., will not apply and the state may be obligated to pay for the evaluation for indigent persons.

Currently, these assessments are already being ordered and paid for through a variety of sources, including payment by individuals who can afford it. The number of annual assessments is unknown. Also unknown is whether this bill will increase the number of substance abuse assessments ordered. In FY 2002-2003, there were 16,215 dependency cases filed.¹⁶ If 70% of cases involve substance abuse, and courts were to order a substance abuse evaluation in each case, this would result in a potential of 11,351 cases with substance abuse evaluations. Note, however, that some cases may involve multiple individuals, but that evaluations may not be ordered where the individual admits to his or her addiction. The estimated cost for an assessment is \$50.

While it is possible that the assessments provided for in sections 2-5 of this bill may require state payment of the assessment if the individual is indigent and there is no other source of payment for the assessment, the fiscal cost is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁵ Section 29.004(10)(d), F.S.

¹⁶ Trial Court Statistical Reference Guide, published by the Office of State Courts Administrator.

1. Applicability of Municipality/County Mandates Provision:

Although counties are given the option of whether to fund drug courts, the bill allows the courts to impose sanctions on pre-trial intervention participants which involve incarceration in county jail, jail-based treatment programs and secure juvenile detention. Thus, the bill would appear to require counties to expend funds. While the Department of Juvenile Justice estimates a \$1.2 million impact, data to estimate the amount of any jail bed impact are unavailable. In addition, pre-trial intervention programs are already authorized under current law and are designed to reduce jail populations and associated costs. So these programs are generally perceived as providing financial benefit to counties that outweigh the costs.

Article VII, Section 18 of the state constitution reads as follows: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.”

Subsection (d) provides for several exemptions to Section 18. Among them are criminal laws and laws having insignificant fiscal impact. Even if the potential costs of incarceration authorized by this bill exceeded an amount considered by the Legislature to constitute an insignificant fiscal impact, these provisions relate to the criminal law, specifically to sentencing and the implementation of criminal sanctions, and therefore are exempt from any requirements of Section 18 of Article VII of the Florida Constitution.

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 some of the persons who administer assessments may qualify as a psychotherapist for purposes of the psychotherapist and patient privilege,¹⁷ the privilege does not apply to statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.¹⁸

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.

¹⁷ 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).

¹⁸ Section 90.503(4)(c), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 9, 2005, the Criminal Justice Committee adopted one amendment to the bill, changing the phrase "child or the child's parent, caregiver, legal custodian, or other person requesting custody of the child" to simply "child or other person requesting custody of the child". The change clarifies that a parent, caregiver, or legal custodian that does not want custody of the child could not be compelled by the court to submit to a substance abuse evaluation, referred to drug court, compelled to comply with treatment, and sent to jail should he or she not comply with the treatment. By the amendment, only adults who seek custody of a child in dependency court are subject to dependency drug court.

On February 23, 2005, the Juvenile Justice Committee adopted two amendments to the bill, which: (1) changed the phrase "child or other person requesting custody of the child" to "child or other person who has custody or is requesting custody of the child;" and (2) changed the phrase "within the limits established for contempt of court" to "within the time limits established for contempt of court." The first amendment permits a dependency court to require persons who have custody of child, in addition to those who are requesting custody of the child as provided in CS/HB 177, to submit to a substance abuse assessment or evaluation. The second amendment is a technical clarification that up to six months incarceration may be imposed.

On March 18, 2005, the Justice Appropriations Committee adopted a strike-all amendment. The amendment eliminated redundant language relating to the court's ability to order persons involved in a dependency proceeding to submit to a substance abuse assessment. The amendment also specifies that entry into a pre-trial intervention program or a treatment-based drug court prior to trial is voluntary. The amendment further specifies that individuals in a pre-trial intervention program or a treatment-based drug court prior to trial must be advised of the program requirements and sanctions and that the person must agree in writing to enter the program.