

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) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Bond</u>	<u>Kramer</u>
2) <u>Juvenile Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Whittier</u>	<u>De La Paz</u>
3) <u>Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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 addicted individual to dependency drug court for monitoring of treatment. This bill may also allow 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 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, 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.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. -- This bill authorizes a court hearing a dependency action to order a individual involved in that action to submit to a substance abuse evaluation. This bill provides that dependency courts may establish a drug court program. This bill provides for incarceration of individuals subject to drug court who violate drug court terms and conditions.

Promote personal responsibility. -- This bill provides for court-ordered evaluation and treatment of addictions, and court-monitored compliance with such 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.
- 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

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

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

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.

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).

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 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 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 include convicted offenders, offenders 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 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 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.

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.

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.

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.

Section 2 amends s. 39.402, F.S., to provide that a court may order a substance abuse assessment or evaluation during a shelter hearing.

Section 3 amends s. 39.407, F.S., to provide that a court may order a substance abuse assessment or evaluation at any point in a dependency case.

Section 4 amends s. 39.507, F.S., to provide that a court may order a substance abuse assessment or evaluation at any point in a dependency case, and that the court may supervise compliance with treatment.

Section 5 amends s. 39.521, F.S., to provide that a court may order a substance abuse assessment or evaluation at any point in a dependency case, and that the court may supervise compliance with treatment.

Section 6 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 7 amends s. 397.334, F.S., to expand treatment-based drug court program options.

Section 8 amends s. 910.035, F.S., relating to transfers from county for pleas and sentencing.

Section 9 amends s. 948.08, F.S., to require a felony pretrial intervention program participating in an drug court program to provide the offender a coordinated strategy for treatment.

Section 10 amends s. 948.46, F.S., to require a misdemeanor pretrial intervention program participating in a drug court program to provide the offender a coordinated strategy for treatment.

Section 11 amends s. 985.306, F.S., to require a delinquency pretrial intervention program participating in a drug court program to provide the offender a coordinated strategy for treatment, and to expand the list of crimes for which an offender is eligible for participation in a delinquency pretrial intervention program.

Section 12 provides an effective date of upon becoming law.

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:

Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None. 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 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.

¹⁵ Section 29.004(10)(d), F.S.

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:

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 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.

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

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

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.

“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.