

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.)

Prepared By: Children and Families Committee

BILL: CS/SB 184

SPONSOR: Committee on Children and Families and Senator Lynn

SUBJECT: Substance Abuse Treatment and Intervention

DATE: January 26, 2005

REVISED: _____

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

I. Summary:

The Committee Substitute for Senate Bill 184 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 persons 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.

Treatment-based drug court programs are authorized to include post adjudicatory programs, provide monitoring for sentenced offenders, and to provide supervision for offenders who transfer from jail or a prison-based treatment program into the community.

This bill specifies certain requirements for the pretrial intervention program that include the development of a coordinated strategy for the participant and a protocol for sanctioning the participant. The bill also requires that the coordinated strategy be provided to the participant in writing when the individual enters the program.

Subject to annual appropriation, this bill 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 bill also revises language allowing for the transfer of a case involved in the drug court treatment program to a different county.

This bill substantially amends sections 39.001, 39.402, 39.407, 39.507, 39.521, 39.701, 39.734, 910.035, 948.08, 948.16, 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 of 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

¹ See Rules 8.290 - 8.695, F.R.J.P.

or physical condition of a parent or legal custodian is controverted (s. 39.407(14), F.S.). No 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 has a drug court program 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 bill 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 bill 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 bill specifies certain goals identified by the family safety program, and the substance abuse treatment program within the Department of Children and Family Services. This bill also specifies that treatment may be required by the court following adjudication. This bill 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 bill 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 shown. The assessment must be conducted by a qualified professional as defined in s. 397.311, F.S.³

This bill 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 bill 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

Section 397.334(3), F.S., is amended to authorize treatment-based drug court programs to include post-adjudicatory programs and to provide monitoring for sentenced offenders. The treatment-based drug court program may also provide supervision for offenders who transfer from jail or a prison-based treatment program into the community.

This bill 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

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.

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.

This bill 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 bill 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.

Pretrial Intervention Requirements

This bill amends ss. 397.334, 948.08, 948.16, and 985.306, F.S., to specify that pretrial intervention programs must require that each participant who is enrolled in the pretrial intervention program be subject to a coordinated strategy which is developed by a drug court team under s. 397.334(2), F.S. The bill requires that the coordinated strategy include a protocol of sanctions that may be imposed on the participant and specifies that the coordinated strategy must be provided in writing to the participant at the time the individual enters into a pretrial drug court program.

This bill further specifies that the protocol of sanctions included in the coordinated strategy must include, as available options, placement in a secure licensed clinical or jail-based treatment program or serving a period of incarceration for non-compliance with program rules within the limits established for contempt of court.

The impetus for strengthening language pertaining to sanctions for pretrial intervention programs stems from a ruling by the Florida Second District Court of Appeals.⁴ In this case, the appeal court ruled that "...the trial court has no authority to impose a term of imprisonment with a resumption of normal criminal proceedings." In response to a motion for rehearing filed by the State, the court acknowledged the success of drug court programs and indicated that there was no wish to cripple the effectiveness of these programs. The appeal court further suggested that "It may be that the Legislature needs to review the adequacy of the statutory enforcement provisions" for pretrial intervention programs.

This bill does not identify any substance abuse programs that are considered a "secure licensed clinical program." The Department of Children and Family Services Substance Abuse Office indicates that Addictions Receiving Facilities are the only secure substance abuse facilities licensed in Florida, and there are currently fewer than 10 of these facilities in the state. These facilities are primarily located in larger metropolitan areas and would be unlikely to have the capacity to serve pretrial intervention program participants. The Substance Abuse Office also indicates that it is unlikely that persons ordered into "secure clinical treatment" would meet the admission criteria for Adolescent Receiving Facilities specified under ch. 397, F.S.

⁴ Diaz v. State, 884 So.2nd 299 (8/18/2004).

The Department of Children and Family Services has expressed concern that, based upon the contents of this bill, an individual who is involved in the dependency court system would be directed to fulfill the requirements of a pretrial intervention program that is governed by the criminal court system. There is also concern that the due process rights of a party involved in a dependency shelter or adjudicatory hearing may be violated if ordered to participate in a pretrial intervention program if the participant has not committed a crime. Further, the utilization of court “contempt” may need clarification to specify whether the contempt is civil or criminal in nature.

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:

The Department of Children and Families has expressed concern that this bill calls for utilizing criminal sanctions in dependency proceedings which are civil proceedings. This practice could raise questions concerning whether certain due process rights pertaining to a criminal matter were afforded in the civil proceeding. These issues require further study.

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.⁵

⁵ 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

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill 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 that the impact of this bill can be absorbed into the current substance abuse system of care that is provided for an estimated 8,602 adults and 2,172 children in the drug court system.

There will be an undetermined fiscal impact on counties associated with providing court ordered jail-based treatment services to individuals who are non-compliant with the pretrial intervention program. If placement in a secure licensed clinical treatment program is designated as a sanction of pretrial intervention programs, these facilities will need to be identified or developed, which will result in an undetermined fiscal impact on the Department of Children and Families.

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.

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 allows for 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:

There are no statutory provisions in chapter 397, F.S., for a secure licensed clinical facility as referenced in this bill.

VII. Related Issues:

This bill 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.

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

VIII. Summary of Amendments:

None.

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