

# 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.)

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Prepared By: Children and Families Committee

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BILL: CS/SB's 114 & 444

INTRODUCER: Children and Families Committee, Senator Lynn and Senator Campbell

SUBJECT: Drug Court Programs

DATE: December 6, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Whiddon	CF	<b>Fav/Combined CS</b>
2.	_____	_____	JU	_____
3.	_____	_____	CJ	_____
4.	_____	_____	JA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Senate Bills 114 and 444 provides legislative intent for early referral and treatment of substance abuse. It establishes goals for the state related to substance abuse treatment services in the dependency process and encourages the use of the drug court model established by s. 397.334, F.S., relating to substance abuse treatment for persons involved in the dependency system. It authorizes the court to order, with good cause, a substance abuse assessment of parents and children at every stage of the dependency process. Participation in treatment, including drug court, may be required following adjudication.

The committee substitute provides that participation in assessment and treatment prior to adjudication is voluntary; however, the court may order assessment and evaluation of a child or person with custody or seeking custody of a child after the filing of a shelter or dependency petition.

After adjudication of dependency or at disposition, the court may require the child or the person with custody or seeking custody to submit to a substance abuse assessment by a qualified professional or to participate in treatment, including treatment-based drug court programs. In addition to supervision by the Department of Children and Families, the court, including the drug court program, may monitor treatment compliance by the child or the person with custody or seeking custody. The court is authorized to impose appropriate available sanctions upon a finding of noncompliance with treatment. The committee substitute also includes participation in a treatment-based drug court program as a condition for modification or extension of completion time of a case plan.

Committee Substitute for Senate Bills 114 and 444 provides that entry into any pretrial treatment-based drug court program is voluntary and that the court may only order an individual to enter a pretrial treatment-based drug court program upon written agreement by the individual. The agreement must include a statement that the individual understands the requirements of the program and the potential sanctions for noncompliance.

The committee substitute provides that all participants in treatment-based drug court programs must be subject to a coordinated strategy provided to the participant in writing when the individual enters the program and which the individual agrees to in writing prior to participation. This strategy includes a protocol of sanctions that must include placement in a secure licensed clinical or jail-based treatment program or serving a period of incarceration for noncompliance with program rules within the time limits established for contempt of court. An individual who has charges dismissed after successful completion of a treatment-based drug court program may have his or her arrest record and plea to the dismissed charges expunged. The bill revises language allowing for the transfer of the case of an individual involved in a treatment-based drug court.

Subject to annual appropriation, the 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 chief judge of each judicial circuit to appoint an advisory committee for the drug court program.

The committee substitute substantially amends sections 39.001, 39.407, 39.507, 39.521, 39.701, 397.334, 910.035, 948.08, 948.16, and 985.306, of the Florida Statutes.

## **II. Present Situation:**

### **Chapter 39, F.S.**

Chapter 39, F.S., governs proceedings relating to children, including those for dependency, protective investigations, custody, permanency (such as adoption), appointment 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.<sup>1</sup>

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 or physical condition of a parent or legal custodian is controverted (s. 39.407(15), 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.

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<sup>1</sup> See Rules 8.290 – 8.695, F.R.J.P.

## **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.<sup>2</sup> The Center estimates that substance abuse causes or contributes to seven 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.

In April 1999, the Department of Health and Human Services issued a report to Congress that highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care.<sup>3</sup> It stated that children in substance abusing households were more likely than others to be served in foster care, spent longer periods 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 88 treatment-based drug court programs. These 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. There are dependency drug courts operating in 12 of the 20 judicial circuits. 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 drug court programs. 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.).

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<sup>2</sup> National Center on Addiction and Substance Abuse, *No Safe Haven: Children of Substance Abusing Parents*, Columbia University, New York, January 1999.

<sup>3</sup> U.S. Department of Health and Human Services. *Blending Perspectives and Building Common Ground. A Report to Congress on Substance Abuse and Child Protection*. U.S. Government Printing Office, Washington, D.C. April, 1999.

### **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:**

Committee Substitute for Senate Bills 114 and 444 creates the “Robert J. Koch Drug Court Intervention Act” and amends several sections of statute that relate to the dependency system, referral to treatment-based drug courts, and referral for pretrial intervention.

#### **Dependency Court – Referrals to Drug Court**

The bill amends s. 39.001, F.S., adding legislative intent recognizing that early referral and comprehensive treatment are cost effective and can help combat substance abuse problems in families. It establishes the following legislative goals for the state regarding substance abuse treatment in the dependency system:

- To ensure the safety of children;
- To prevent and remediate the consequences of substance abuse with families involved in protective supervision or foster care and reduce substance abuse, including alcohol abuse, for families who are at risk of being involved in protective supervision or foster care;
- To expedite permanency for children and reunify healthy, intact families when appropriate; and
- To support families in recovery.

The committee substitute provides legislative intent that encourages the use of the drug court program model established under s. 397.334, F.S., and authorizes the courts to assess parents and children where good cause is shown and where the court deems necessary and to identify and address substance abuse problems at every stage of the dependency process. Participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment prior to adjudication is voluntary except as provided in s. 39.407(15), F.S. Additionally, the committee substitute provides that participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult and is intended to enable these agencies to better meet their needs through shared responsibility and resources.

The bill amends s. 39.407, F.S., authorizing the court, with good cause at any time after the shelter hearing or petition for dependency is filed, to order a child, the person with custody or the person requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be conducted by a qualified professional as defined in s.

397.311, F.S.<sup>4</sup> These provisions do not authorize the placement of a child with a person seeking custody who requires substance abuse treatment, other than the parent or legal custodian.

Section 39.507, F.S., relating to adjudicatory hearings, is also amended to provide that after an adjudication of dependency, or a finding of dependency when adjudication is withheld, the court may order a child or a person with custody or requesting custody of the child to submit to a substance abuse assessment and evaluation administered by a qualified professional, as defined in s. 397.311, F.S. This section also authorizes the court to require the person to participate in and comply with treatment and services identified as necessary by the evaluation, including, when appropriate and available, participation in and compliance with a treatment-based drug court program established under s. 397.334, F.S. In addition to supervision by the department, the committee substitute also authorizes the court, including the treatment-based drug court program, to oversee the progress and compliance with treatment by the child or the person with or seeking custody of the child. The court is authorized to impose appropriate available sanctions for noncompliance or make a finding of noncompliance for consideration regarding alternative placement of the child. Again, these provisions do not authorize the placement of a child with a person seeking custody who requires substance abuse treatment, other than the parent or legal custodian.

Section 39.521, F.S., relating to disposition hearings is similarly 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 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(2), F.S., is created specifying that entry into a pretrial treatment-based drug court program is voluntary. The court is authorized to order an individual to enter into a pretrial treatment-based drug court program only upon a written agreement by the program participant that includes an acknowledgement that the participant understands the requirements of the program and the potential sanctions for failing to comply with these requirements.

The committee substitute renumbers and amends s. 397.334(3), F.S., providing that treatment-based drug court programs may include, in addition to pretrial intervention programs, drug court programs under the newly created section of ch. 39, F.S., post adjudicatory programs, and the monitoring of sentenced offenders. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy that may include a protocol of sanctions that may be imposed on the participant. The protocol of sanctions must include as options placement in a

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<sup>4</sup> A "qualified professional" includes licensed physicians, psychologists, clinical social workers, marriage and family therapists, mental health counselors, 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(25), F.S.

secure licensed clinical or jail-based treatment program or incarceration for noncompliance within the time limits for contempt of court. This section also provides that any person whose charges are dismissed after successfully completing a drug court program may have their arrest record and plea of nolo contendere to the dismissed charges expunged.

Committee Substitute for Senate Bills 114 and 444 deletes the provision in s. 985.306(2), F.S., permitting the chief judge in each circuit to appoint an advisory committee for the delinquency pretrial intervention program and creates s. 397.334(8), F.S., to authorize the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program. It 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 the conditions necessary for transferring the cases of defendants involved in the drug court 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 based upon either the successful or unsuccessful completion of the program. 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 committee substitute also creates s. 397.334(5), F.S., providing that, subject to an annual appropriation, each judicial circuit shall 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 the bill 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, F.S.

### **Pretrial Intervention Requirements**

The committee substitute 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 a felony, misdemeanor, or delinquency pretrial intervention program be subject to a coordinated strategy developed by a drug court team under s. 397.334(2), F.S. The committee substitute provides that the coordinated strategy may 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.

The bill further specifies that for felony or misdemeanor programs, 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. For

delinquency pretrial programs, the protocol of sanctions included in the coordinated strategy must include, as available options, placement in a secure licensed clinical facility or placement in secure detention for non-compliance with program rules.

The impetus for strengthening language pertaining to sanctions for pretrial intervention programs stems from a ruling by the Florida Second District Court of Appeals. 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."<sup>5</sup> 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, "It may be that the Legislature needs to review the adequacy of the statutory enforcement provisions" for pretrial intervention programs.

The committee substitute takes effect upon becoming a law.

#### **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:

Legal staff in the Department of Children and Families has expressed concern relating to utilizing criminal sanctions in dependency proceedings, which are civil proceedings. This could occur when a civil proceeding results in incarceration, albeit through contempt findings, and otherwise raises questions of whether certain due process rights pertaining to criminal matters were afforded in the civil proceeding. Additionally, they note that the bill proposes to subject nonparties in the dependency proceeding to the jurisdiction of the drug court established by the committee substitute (for dependency matters).

Other constitutional concerns expressed by the department include subjecting a nonparty to civil contempt, failure to distinguish whether the contempt is civil or criminal, and failure to define which juvenile procedural rule applies.

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<sup>5</sup> Diaz v. State, 884 So.2nd 299 (8/18/2004).

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

None.

**B. Private Sector Impact:**

The committee substitute 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 may be affected if additional persons are referred for treatment for which insurance reimbursement is sought.

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:****Department of Juvenile Justice**

The Department of Juvenile Justice indicates that the amendment to s. 985.306, F.S., would allow the court to place youth who do not comply with the conditions and sanction of the drug court program in secure detention up to five days for a first violation and up to 15 days for subsequent violations, thus increasing the number of youth eligible for placement in secure detention.

According to Office of the State Courts Administrator, there were 1,798 youth placed in drug court programs statewide during calendar year 2004 not including Broward and Seminole counties. Although no data was provided in reference to the number of youth who violated the conditions of the program, the Department of Juvenile Justice used the assumption that the rate of violation for drug court would be similar to that experienced in other departmental diversion programs. Using that estimate, 17 percent of the 1,798 youth would violate and 306 youth would be eligible for placement in secure detention up to 5 days due to a first non-compliance. Assuming five percent of the first time violators are non-compliant a second time, 15 youth would be eligible for placement in secure detention up to 15 days due to a second non-compliance.



Using the projections described, the following formula was used to determine projected costs.

1,798 youth X 17% violations=	306 first time violators
306 1st violators X 5 days=1,530 resident days X \$115 per day =	\$175,950
306 1st violators X 5% 2nd violators=	15 second time violators
15 youth X 15 days 2nd violators=225 resident days X \$115 daily =	\$28,875

Total cost FY 2005-2006 12 months	\$204,825
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The actual cost may be higher, as the data provided did not include Broward and Seminole counties and no assumption was made about how many youth participate in the program in those counties.

It is assumed all of these youth would be post-disposition, as they would be placed in detention as contempt of court cases with the placement in detention being the disposition of the contempt case.

### **Department of Children and Families**

The Department of Children and Families has indicated that the impact of the bill can be absorbed into the current substance abuse system of care that is provided for an estimated 8,602 adults and 2,200 children in the drug court system.

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 may 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.

### **Counties**

There may be an undetermined fiscal impact on counties associated with providing court ordered jail or detention-based treatment services to individuals who are non-compliant with the pretrial intervention program. However, this impact is expected to be minimal as the language in the bill is permissive and participation in the pretrial intervention program is voluntary.

## **Courts**

All 20 judicial circuits have at least 1 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 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:**

The bill does not identify substance abuse programs that are a “secure licensed clinical program.” The Department of Children and Family Services Substance Abuse Program 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 Program 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 s. 397.675, F.S.

## **VIII. Summary of Amendments:**

None.

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

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