

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 175 CS Drug Court Programs  
**SPONSOR(S):** Adams and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 114, SB 444

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Juvenile Justice Committee</u>	<u>4 Y, 0 N, w/CS</u>	<u>White</u>	<u>White</u>
3) <u>Judiciary Appropriations Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Brazzell</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>De La Paz</u>
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The term "drug court" refers to a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals. This bill modifies laws regarding drug court programs in dependency, criminal, and delinquency proceedings.

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). This bill authorizes a court to order individuals involved in a dependency case to be evaluated for drug or alcohol problems and allows the court, after a finding of dependency, to require an individual to participate in and comply with treatment-based drug court programs. Individuals may voluntarily enter drug court prior to a finding of dependency.

In adult criminal and juvenile delinquency courts, drug court programs have traditionally been structured as pretrial diversion programs. This bill authorizes a court to require postadjudicatory offenders to participate in and comply with treatment-based drug court programs. Certain individuals charged with crimes may voluntarily enter drug court prior to trial.

This bill also provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with program rules. This protocol may include, but is not limited to: (a) placement in specified licensed substance abuse treatment programs; (b) placement in a jail-based treatment program; (c) secure detention; or (d) incarceration. These provisions of the bill address recent case law holding that incarceration or a licensed substance abuse treatment program may not be imposed for noncompliance with pretrial drug court programs as such sanctions are not authorized by current law.

The fiscal impact to state and local governments of this bill is unknown. The language of the bill is permissive (i.e. participation in drug court programs is at the counties' discretion). As such, the bill does not appear to implicate the mandate provisions of Article VII, Section 18 of the Florida Constitution. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This 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. This bill expands the scope of drug court programs beyond pretrial intervention programs to include dependency drug court and postadjudicatory programs. It also authorizes counties to adopt sanctions for individuals who violate drug court terms and conditions.

Promote Personal Responsibility: This bill provides for court-ordered substance abuse evaluation and treatment and court-monitored compliance with such orders. It also authorizes counties to adopt sanctions for individuals who violate drug court terms and conditions.

Empower Families: This bill increases court responsibilities in dependency court matters.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Proceedings Relating to Children

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(s). 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.<sup>1</sup> 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 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 or 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

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

its relationship to children in foster care. It stated that children in substance abuse 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.<sup>2</sup> 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.”<sup>3</sup> 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 and the criminal justice system together.<sup>4</sup>

As of July 2004, 88 drug courts operated in 43 counties.<sup>5</sup> There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.<sup>6</sup>

In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism and that drug courts are a cost-effective alternative to incarceration of drug offenders.<sup>7</sup>

Drug courts operate on a reward and punishment system. 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. Punishments for failing to comply with the program typically include work assignment, increased treatment modalities, increased court appearances, increased urinalysis testing, community service, house arrest, and incarceration. Failure to comply with the program can also result in the continuation of the criminal process and possible additional jail time upon conviction. Recently, two District Courts of Appeal have ruled that because there is no statutory authorization for the imposition of incarceration or a licensed substance abuse treatment program (specifically an Addiction Receiving Facility) upon violation of a drug court program, such sanctions may not be imposed.<sup>8</sup>

### **Effect of the Bill**

#### Dependency Proceedings

This bill expands existing legislative intent to encourage courts to use the drug court program model and to authorize courts to assess persons who have custody or are requesting custody of children for substance abuse problems in every stage of the dependency process. This bill establishes the following goals for substance abuse treatment services in the dependency process:

- ensure the safety of children;
- prevent and remediate the consequence of substance abuse;
- expedite permanent placement; and
- support families in recovery.

This bill authorizes a dependency court, upon a showing of good cause, to order a person who has custody or is requesting custody of the child, to submit to substance abuse assessment or evaluation. The assessment or evaluation must be made by a qualified professional, as defined by s. 397.311,

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Report on Florida's Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, p.5

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Diaz v. State*, 884 So.2d 299 (Fla. 2<sup>nd</sup> DCA 2004); *T.N. v. Portesy*, 30 FLW D2369 (Fla. 2<sup>nd</sup> DCA October 7, 2005).

F.S.<sup>9</sup> After an adjudication of dependency, or finding of dependency where adjudication is withheld, the court may require the individual to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program. Prior to a finding of dependency, participation in treatment, including a treatment-based drug court program, is voluntary. The court, in conjunction with other public agencies, may oversee progress and compliance with treatment and may impose appropriate available sanctions for noncompliance. The court may also make a finding of noncompliance for consideration in determining whether an alternate placement of the child is in the child's best interests.

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with dependency drug court program rules, which may include, but is not limited to: (a) placement in a substance abuse program offered by a licensed service provider as defined in s. 397.311, F.S.;<sup>10</sup> (b) placement in a jail-based treatment program; (c) secure detention under ch. 985, F.S.;<sup>11</sup> or (d) incarceration within the time limits established for contempt of court (six months).

### Criminal and Juvenile Delinquency Proceedings

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. A defendant who successfully completes the drug court program receives the benefit of dismissal of the criminal charge, thereby sparing the defendant from jail and from a permanent criminal record of a conviction. Pretrial drug court programs suspend the setting of a trial date and use the threat of resetting the trial date, and possible conviction, as a means to encourage compliance with the program.

This bill provides that, in addition to pretrial intervention programs, treatment-based drug court programs may include postadjudicatory programs and reviewing the status of compliance or noncompliance of sentenced offenders.

This bill specifies that entry into any pretrial treatment-based drug court program is voluntary and that the coordinated strategy adopted by the county for its drug court program, which may include a protocol of sanctions, must be provided in writing to a participant before he or she agrees to enter into a pretrial treatment-based drug court program. A recent court ruling indicates that a participating individual may be allowed to "opt out" of the program if there is an administrative order stating that *participation* in the program is voluntary.<sup>12</sup>

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<sup>9</sup> 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."

<sup>10</sup> Section 397.311(18) defines a "licensed service provider" as, ". . . a public agency under this chapter, a private for-profit or not-for-profit agency under this chapter, a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse impairment services . . ." through one or more of the following licensable service components: (a) an addictions receiving facility; (b) detoxification; (c) intensive inpatient treatment; (d) residential treatment; (e) nonresidential day and night treatment; (f) outpatient treatment; (g) medication and methadone maintenance treatment; (h) prevention; and (i) intervention.

<sup>11</sup> In the event a juvenile violates a dependency drug court treatment program, the court may find that the juvenile committed contempt of court under s. 985.216, F.S., and may securely detain the juvenile if no alternative sanctions are available for up to five days for a first offense and up to 15 days for a second offense.

<sup>12</sup> Section 948.08, F.S. requires that pretrial substance abuse education and treatment intervention programs be approved by the chief judge of the circuit. The court in *Mullin v. Jenne*, 890 So.2d 543 (Fla. 4<sup>th</sup> DCA 2005), referenced this statute and held that where a chief judge's administrative order defining the parameters of the program stated that *participation* in the program was voluntary (rather than *entry*), a court could not require a defendant to remain in a drug court treatment program. The court noted that had the administrative order stated that "entry" into the program was voluntary, a different result would have occurred. Although this bill provides that entry, rather than participation, is voluntary, pretrial substance abuse intervention programs are still, by statute, subject to approval by the chief judge of the circuit. Thus, should a chief

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with criminal and juvenile delinquency drug court program rules, which may include, but is not limited to: (a) placement in a substance abuse program offered by a licensed service provider as defined in s. 397.311, F.S.;<sup>13</sup> (b) placement in a jail-based treatment program; (c) secure detention under ch. 985, F.S.;<sup>14</sup> or (d) incarceration within the time limits established for contempt of court (six months).<sup>15</sup>

This bill provides that an individual who successfully completes a treatment-based drug court program, if otherwise eligible, may have his or her arrest record and nolo contendere plea expunged.

This bill requires, contingent upon an annual appropriation, each judicial circuit to establish at least one coordinator position for the treatment-based drug court program.<sup>16</sup>

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 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.

Finally, the bill adds tampering with evidence, solicitation to purchase a controlled substance, and obtaining a prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

#### C. SECTION DIRECTORY:

**Section 1.** Names the act the “Robert J. Koch Drug Court Intervention Act.”

**Section 2.** Amends s. 39.001(4), F.S., adding legislative intent language regarding substance abuse treatment services in proceedings relating to children.

**Section 3.** Amends s. 39.407, F.S., providing that at any time after a shelter or dependency petition is filed, a court may order a person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation.

**Section 4.** Amends s. 39.507, F.S., providing that after an adjudication of dependency or finding of dependency where adjudication is withheld, the court may order a person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; and that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child’s placement.

**Section 5.** Amends s. 39.521(1)(b)1., F.S., providing that when a child is adjudicated dependent, the court may order a person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; the court may require participation and compliance with treatment; that the

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judge issue an administrative order stating that participation in a program is voluntary, participating individuals may opt out of the program.

<sup>13</sup> See Footnote 10.

<sup>14</sup> In the event a juvenile violates a delinquency drug court treatment program, the court may securely detain the juvenile if: (a) it finds that the juvenile committed contempt of court under s. 985.216, F.S. (for up to five days for a first offense and up to 15 days for a second offense, if no alternative sanctions are available); or (b) the juvenile has absconded from a drug court treatment program imposed as a condition of probation or conditional release (under s. 985.215(2)(a), F.S., a juvenile who absconds from a probation program or while on conditional release may be held in secure detention for up to 24 hours at which point the court must conduct a detention hearing to determine whether the juvenile’s score on the risk assessment instrument warrants continued detention for up to 21 days under s. 985.215(2) and (5)(c), F.S.).

<sup>15</sup> The bill’s provision of permissible sanctions would have the effect of overturning the effect of the decisions in *Diaz* and *T.N. Diaz v. State*, 884 So.2d 299 (Fla. 2<sup>nd</sup> DCA 2004) ; *T.N. v. Portesy*, 30 FLW D2369 (Fla. 2nd DCA October 7, 2005). Note that the *Diaz* court suggested that the Legislature make this change.

<sup>16</sup> These positions were established in prior budgets and are currently staffed and funded.

court may oversee progress and compliance with treatment; and the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

**Section 6.** Amends s. 397.334, F.S., providing that entry into a pretrial treatment-based drug court program is voluntary; expanding the types of treatment-based drug court programs; providing for a protocol of sanctions that may be adopted by a county; and providing a treatment-based drug court program coordinator within each judicial circuit; and permitting a circuit's chief judge to appoint an advisory committee for the drug program.

**Section 7.** Amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing.

**Section 8.** Amends s. 948.08, F.S., providing that while in a felony pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 9.** Amends s. 948.16, F.S., providing that while in a misdemeanor pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 10.** Amends s. 985.306, F.S., expanding the list of crimes for which an offender is eligible for participation in a delinquency pretrial substance abuse education and treatment intervention program and providing that while in a delinquency pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 11.** Provides that the act takes effect upon becoming a 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:

See "Fiscal Comments," below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None. This bill does not affect a local government revenue source.

#### 2. Expenditures:

Indeterminate. The language in this bill is permissive and participation in a drug court program will be left to the counties' discretion. Likewise, the bill authorizes counties in their discretion to adopt a protocol of sanctions for individuals who fail to comply with drug court programs. The protocol of sanctions for programs may include jail-based treatment programs, incarceration, and secure detention for noncompliance. These sanctions would result in a cost to the counties. Given the permissive nature of the drug court programs and sanctions authorized, there is no data to estimate the number of individuals that may be sanctioned under this bill. It should be noted that pretrial intervention programs are already authorized in law and are designed to reduce jail populations and

associated costs. Thus, pretrial intervention programs are generally perceived as providing a financial benefit to counties.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

#### D. FISCAL COMMENTS:

##### Departments of Children and Families and Juvenile Justice

The fiscal impact on state government is indeterminate but expected to be insignificant.

Section 29.008(2), F.S., provides for counties to be responsible for the costs of the state court system to meet local requirements. Since a county may choose whether to implement a drug court system, it is considered a local requirement, and thus drug court funding is a county responsibility. However, decisions made by a judge in the course of drug court proceedings may impact certain state expenditures. Such expenditures primarily include those made by the Department of Children and Families (DCF) for substance abuse treatment and by the Department of Juvenile Justice (DJJ) for detention of juveniles who have committed certain offenses under ch. 985, F.S.

Whether these expenditures are increased significantly depends on (1) whether the bill increases the number of individuals entering drug courts and (2) the degree to which the bill changes the extent to which individuals involved in drug courts access substance abuse treatment services from the DCF or are subject to detention by the DJJ and these departments' abilities to absorb these costs. In regard to (1), the bill's impact on the number of individuals entering drug courts is unclear. While the bill does expand the number of individuals eligible for drug court, it does not appear that it will result in a significant increase. In regard to (2), the bill's impact is also unclear but is likely to be insignificant since the bill primarily codifies in more specific language many drug courts' existing practices. Also:

- The DCF states that it gives priority for funding to individuals involved in the drug court system. It currently funds substance abuse treatment for an estimated 8,602 adults and 2,200 children involved in the drug court system. Based on these factors and the permissiveness of the language, according to the DCF, "the net impact of this legislation may not be significant."
- According to the DJJ, though "it is impossible to accurately calculate the fiscal impact [from the placement of youth in secure detention] due to the lack of specific guidelines for the individual's sanctions", the DJJ estimates a fiscal impact ranging from \$204,825 to \$422,280 or above.<sup>17</sup> However, secure detention is only one of the sanctions (and is one of the more severe sanctions) that could be assessed in a drug court, so not all violators would receive secure detention. Additionally, some youths who would be detained under this bill for violating drug court would likely have received detention anyway, absent the bill, by exiting drug court and re-entering the DJJ system. Also, by making slightly more youth eligible for drug court and thus diverting them from the DJJ system, the bill may lead to some youths not entering DJJ secure detention who otherwise would, though this number is not likely to be significant. Furthermore, it appears that the court can already impose secure detention as a sanction in certain instances.

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<sup>17</sup> Section 985.215(5)(c), F.S., permits a period of detention up to 21 days for specified offenses, including absconding from a nonresidential commitment program; s. 985.216, F.S., permits a period of detention of up to 5 days for a first offense and up to 15 days for subsequent offenses. Secure detention costs the DJJ \$115 per day, and the average stay is 12 days. DJJ states that according to the Office of the State Courts Administrator (OSCA), 1,798 youth participated in drug court programs during calendar year 2004, not including Broward and Seminole Counties. The DJJ states that the rate of violation in other department diversion programs is approximately 17%. Using these figures and assuming the youth are post-dispositional, detained under s. 985.216, F.S., with 5% second-time violators, DJJ estimates a fiscal impact of \$204,825. Assuming that the youth are post-dispositional and detained under s. 985.215(5)(c), DJJ estimates a fiscal impact of \$422,280. However, since the number of youth participating in drug court does not include those from Broward or Seminole Counties, the fiscal impact could be higher.

Based on decision tree analysis incorporating these factors, it appears that the fiscal impact on DJJ, while potentially positive, would not be significant.

#### Office of State Courts Administrator

The bill requires the establishment by each judicial circuit, contingent upon appropriations, of a coordinator for the drug court program. However, the Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there would not be a fiscal impact related to this provision.

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."<sup>18</sup> 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.<sup>19</sup> 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 only 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.<sup>20</sup> If 70 percent 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.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

<sup>18</sup> Section 29.004(10)(d), F.S.

<sup>19</sup> Section 29.004(10), F.S.

<sup>20</sup> *Trial Court Statistical Reference Guide*, published by the Office of State Courts Administrator.

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.”

The bill’s language is permissive (i.e. participation in drug court programs and adoption of a protocol of sanctions are at the counties’ discretion). As such, the bill does not appear to implicate the mandate provisions of Article VII, Section 18 of the Florida Constitution

## 2. Other:

The amendments to s. 397.334, F.S. provide that the protocol of sanctions for treatment-based programs authorized in Chapter 39 (dependency proceedings) may include incarceration for noncompliance with the program rules within the time limits established for contempt of court. Thus, an individual participating in a treatment-based drug court program as part of a dependency proceeding may be incarcerated for failing to comply with the program’s terms and conditions. As written, this bill authorizes a court to impose a criminal punishment (incarceration) in a civil proceeding (dependency proceedings are civil proceedings). Although incarceration can be used in civil proceedings as a sanction for criminal and civil contempt, this bill does not specify that incarceration would be the result of contempt proceedings (only that the incarceration may not exceed the time limits established for contempt of court). This could result in a constitutional challenge.

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 psychotherapists for purposes of the psychotherapist and patient privilege<sup>21</sup>, 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.<sup>22</sup>

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

The Criminal Justice Committee adopted one amendment to the bill. As filed, the bill provides that individuals participating in treatment-based drug court programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The bill also provides that individuals participating in pretrial intervention programs,

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<sup>21</sup> 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. 4<sup>th</sup> DCA 2002).

<sup>22</sup> Section 90.503(4)(b), F.S.

misdemeanor pretrial substance abuse education and treatment intervention programs, and delinquency pretrial intervention programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The first amendment adopted by the committee made the language of these provisions more permissive by providing that the coordinated strategy *may* include a protocol of sanctions. The first amendment also deletes a provision allowing state attorneys to deny a defendant's admission into a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program.

The Juvenile Justice Committee adopted two amendments to the bill, which amended its provisions to: (a) consistently provide that counties may, rather than must, adopt specified sanctions for drug court program noncompliance; (b) clarify that the specified sanctions are not exclusive, i.e., counties may adopt other types of sanctions; (c) substitute "substance abuse treatment program offered by a licensed service provider as defined in s. 397.311" for the undefined term "secure licensed clinical program;" and (d) provide that juveniles who fail to comply with drug court programs may be securely detained when permitted under ch. 985, F.S., rather than only when permitted by s. 985.216, F.S., the juvenile contempt of court statute.

At its February 9, 2006, meeting, the Judiciary Appropriations committee adopted eight amendments to the bill. These amendments:

- Clarify legislative intent regarding the persons from whom courts may require substance abuse assessments in dependency cases;
- Revise language to clarify that the bill does not authorize placement of children with certain persons who require substance abuse treatment;
- Remove bill language granting judges the ability to modify terms of a case plan to require participation in drug court;
- Restore current statutory language allowing the court to deny certain persons the ability to enter drug court, with the modification that the state attorney cannot deny outright but may file a motion to do so; and
- Make conforming and technical changes.

On April 4, 2006, the Justice Council adopted a strike-all amendment to the bill and reported the bill favorably with Committee Substitute. The strike-all amendment:

- Restores current law to the ability of state attorneys to decline to divert a defendant to PTI when that defendant has already rejected a previous PTI offer.
- Removes references to "child" to avoid application of sanctions to dependent children.
- Addresses a statutory conflict the bill would have created by clarifying (in Section 6, new paragraph (2)) that the court may order entry into the program when two current disqualifying statutory provisions are not applicable.
- Corrects a separation of powers issue in Section 6 paragraph (4) by changing "monitoring sentenced offenders," which is already an executive branch function statutorily assigned to DOC under s. 948.08(1), by describing the court's function as "reviewing the status of compliance or noncompliance of sentenced offenders. . ."
- Relocates the language related to expunction to appropriate locations in 948 and 985.