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LEGISLATIVE ACTION

Senate	.	House
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Floor: AD/CR	.	
05/08/2009 01:00 PM	.	
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The Conference Committee on CS for SB 1726 recommended the following:

1 **Senate Conference Committee Amendment (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Present subsections (3) through (8) of section
7 397.334, Florida Statutes, are renumbered as subsections (4)
8 through (9), respectively, a new subsection (3) is added to that
9 section, and present subsection (5) of that section is amended,
10 to read:

11 397.334 Treatment-based drug court programs.—



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12 (3) (a) Entry into any postadjudicatory treatment-based drug
13 court program as a condition of probation or community control
14 pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based
15 upon the sentencing court's assessment of the defendant's
16 criminal history, substance abuse screening outcome, amenability
17 to the services of the program, total sentence points, the
18 recommendation of the state attorney and the victim, if any, and
19 the defendant's agreement to enter the program.

20 (b) An offender who is sentenced to a postadjudicatory drug
21 court program and who, while a drug court participant, is the
22 subject of a violation of probation or community control under
23 s. 948.06, based solely upon a failed or suspect substance abuse
24 test administered pursuant to s. 948.01 or s. 948.03, shall have
25 the violation of probation or community control heard by the
26 judge presiding over the postadjudicatory drug court program.
27 The judge shall dispose of any such violation, after a hearing
28 on or admission of the violation, as he or she deems appropriate
29 if the resulting sentence or conditions are lawful.

30 (6) (a) ~~(5)~~ Contingent upon an annual appropriation by the
31 Legislature, each judicial circuit shall establish, at a
32 minimum, one coordinator position for the treatment-based drug
33 court program within the state courts system to coordinate the
34 responsibilities of the participating agencies and service
35 providers. Each coordinator shall provide direct support to the
36 treatment-based drug court program by providing coordination
37 between the multidisciplinary team and the judiciary, providing
38 case management, monitoring compliance of the participants in
39 the treatment-based drug court program with court requirements,
40 and providing program evaluation and accountability.



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41 (b) Each circuit shall report sufficient client-level and
42 programmatic data to the Office of State Courts Administrator
43 annually for purposes of program evaluation. Client-level data
44 include primary offenses that resulted in the drug court
45 referral or sentence, treatment compliance, completion status
46 and reasons for failure to complete, offenses committed during
47 treatment and the sanctions imposed, frequency of court
48 appearances, and units of service. Programmatic data include
49 referral and screening procedures, eligibility criteria, type
50 and duration of treatment offered, and residential treatment
51 resources.

52 Section 2. Subsection (3) of section 921.0026, Florida
53 Statutes, is amended, and paragraph (m) is added to subsection
54 (2) of that section, to read:

55 921.0026 Mitigating circumstances.—This section applies to
56 any felony offense, except any capital felony, committed on or
57 after October 1, 1998.

58 (2) Mitigating circumstances under which a departure from
59 the lowest permissible sentence is reasonably justified include,
60 but are not limited to:

61 (m) The defendant's offense is a nonviolent felony, the
62 defendant's Criminal Punishment Code scoresheet total sentence
63 points under s. 921.0024 are 52 points or fewer, and the court
64 determines that the defendant is amenable to the services of a
65 postadjudicatory treatment-based drug court program and is
66 otherwise qualified to participate in the program as part of the
67 sentence. For purposes of this paragraph, the term "nonviolent
68 felony" has the same meaning as provided in s. 948.08(6).

69 (3) Except as provided in paragraph (2)(m), the defendant's



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70 substance abuse or addiction, including intoxication at the time
71 of the offense, is not a mitigating factor under subsection (2)
72 and does not, under any circumstances, justify a downward
73 departure from the permissible sentencing range.

74 Section 3. Subsection (7) is added to section 948.01,
75 Florida Statutes, to read:

76 948.01 When court may place defendant on probation or into
77 community control.—

78 (7) (a) Notwithstanding s. 921.0024 and effective for
79 offenses committed on or after July 1, 2009, the sentencing
80 court may place the defendant into a postadjudicatory treatment-
81 based drug court program if the defendant's Criminal Punishment
82 Code scoresheet total sentence points under s. 921.0024 are 52
83 points or fewer and the defendant is a nonviolent felony
84 offender, amenable to substance abuse treatment, and otherwise
85 qualifies under s. 397.334(3). The satisfactory completion of
86 the program shall be a condition of the defendant's probation or
87 community control. As used in this subsection, the term
88 "nonviolent felony" means a third-degree felony violation under
89 chapter 810 or any other felony offense that is not a forcible
90 felony as defined in s. 776.08.

91 (b) The defendant must be fully advised of the purpose of
92 the program and the defendant must agree to enter the program.
93 The original sentencing court shall relinquish jurisdiction of
94 the defendant's case to the postadjudicatory drug court program
95 until the defendant is no longer active in the program, the case
96 is returned to the sentencing court due to the defendant's
97 termination from the program for failure to comply with the
98 terms thereof, or the defendant's sentence is completed.



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99 Section 4. Paragraph (i) is added to subsection (2) of
100 section 948.06, Florida Statutes, to read:

101 948.06 Violation of probation or community control;
102 revocation; modification; continuance; failure to pay
103 restitution or cost of supervision.—

104 (2)

105 (i)1. Notwithstanding s. 921.0024 and effective for
106 offenses committed on or after July 1, 2009, the court may order
107 the defendant to successfully complete a postadjudicatory
108 treatment-based drug court program if:

109 a. The court finds or the offender admits that the offender
110 has violated his or her community control or probation and the
111 violation was due only to a failed or suspect substance abuse
112 test;

113 b. The offender's Criminal Punishment Code scoresheet total
114 sentence points under s. 921.0024 are 52 points or fewer after
115 including points for the violation;

116 c. The underlying offense is a nonviolent felony. As used
117 in this subsection, the term "nonviolent felony" means a third-
118 degree felony violation under chapter 810 or any other felony
119 offense that is not a forcible felony as defined in s. 776.08;

120 d. The court determines that the offender is amenable to
121 the services of a postadjudicatory treatment-based drug court
122 program;

123 e. The court has explained the purpose of the program to
124 the offender and the offender has agreed to participate; and

125 f. The offender is otherwise qualified to participate in
126 the program under the provisions of s. 397.334(3).

127 2. After the court orders the modification of community



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128 control or probation, the original sentencing court shall
129 relinquish jurisdiction of the offender's case to the
130 postadjudicatory treatment-based drug court program until the
131 offender is no longer active in the program, the case is
132 returned to the sentencing court due to the offender's
133 termination from the program for failure to comply with the
134 terms thereof, or the offender's sentence is completed.

135 Section 5. Paragraphs (a), (b), and (c) of subsection (6)
136 of section 948.08, Florida Statutes, are amended to read:

137 948.08 Pretrial intervention program.-

138 (6) (a) For purposes of this subsection, the term
139 "nonviolent felony" means a third-degree felony violation of
140 chapter 810 or any other felony offense that is not a forcible
141 felony as defined in s. 776.08. Notwithstanding any provision of
142 this section, a person who is charged with a nonviolent felony
143 and is identified as having a substance abuse problem or is
144 charged with a felony of the second or third degree for purchase
145 or possession of a controlled substance under chapter 893,
146 prostitution, tampering with evidence, solicitation for purchase
147 of a controlled substance, or obtaining a prescription by fraud;
148 who has not been charged with a crime involving violence,
149 including, but not limited to, murder, sexual battery, robbery,
150 carjacking, home-invasion robbery, or any other crime involving
151 violence; and who has not previously been convicted of a felony
152 nor been admitted to a felony pretrial program referred to in
153 this section is eligible for voluntary admission into a pretrial
154 substance abuse education and treatment intervention program,
155 including a treatment-based drug court program established
156 pursuant to s. 397.334, approved by the chief judge of the



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157 circuit, for a period of not less than 1 year in duration, upon
158 motion of either party or the court's own motion, except:

159 1. If a defendant was previously offered admission to a
160 pretrial substance abuse education and treatment intervention
161 program at any time prior to trial and the defendant rejected
162 that offer on the record, then the court or the state attorney
163 may deny the defendant's admission to such a program.

164 2. If the state attorney believes that the facts and
165 circumstances of the case suggest the defendant's involvement in
166 the dealing and selling of controlled substances, the court
167 shall hold a preadmission hearing. If the state attorney
168 establishes, by a preponderance of the evidence at such hearing,
169 that the defendant was involved in the dealing or selling of
170 controlled substances, the court shall deny the defendant's
171 admission into a pretrial intervention program.

172 (b) While enrolled in a pretrial intervention program
173 authorized by this subsection, the participant is subject to a
174 coordinated strategy developed by a drug court team under s.
175 397.334(4) ~~s. 397.334(3)~~. The coordinated strategy may include a
176 protocol of sanctions that may be imposed upon the participant
177 for noncompliance with program rules. The protocol of sanctions
178 may include, but is not limited to, placement in a substance
179 abuse treatment program offered by a licensed service provider
180 as defined in s. 397.311 or in a jail-based treatment program or
181 serving a period of incarceration within the time limits
182 established for contempt of court. The coordinated strategy must
183 be provided in writing to the participant before the participant
184 agrees to enter into a pretrial treatment-based drug court
185 program or other pretrial intervention program. Any person whose



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186 charges are dismissed after successful completion of the
187 treatment-based drug court program, if otherwise eligible, may
188 have his or her arrest record and plea of nolo contendere to the
189 dismissed charges expunged under s. 943.0585.

190 (c) At the end of the pretrial intervention period, the
191 court shall consider the recommendation of the administrator
192 pursuant to subsection (5) and the recommendation of the state
193 attorney as to disposition of the pending charges. The court
194 shall determine, by written finding, whether the defendant has
195 successfully completed the pretrial intervention program.
196 Notwithstanding the coordinated strategy developed by a drug
197 court team pursuant to s. 397.334(4) ~~s. 397.334(3)~~, if the court
198 finds that the defendant has not successfully completed the
199 pretrial intervention program, the court may order the person to
200 continue in education and treatment, which may include substance
201 abuse treatment programs offered by licensed service providers
202 as defined in s. 397.311 or jail-based treatment programs, or
203 order that the charges revert to normal channels for
204 prosecution. The court shall dismiss the charges upon a finding
205 that the defendant has successfully completed the pretrial
206 intervention program.

207 Section 6. Paragraph (b) of subsection (1) and subsection
208 (2) of section 948.16, Florida Statutes, are amended to read:

209 948.16 Misdemeanor pretrial substance abuse education and
210 treatment intervention program.—

211 (1)

212 (b) While enrolled in a pretrial intervention program
213 authorized by this section, the participant is subject to a
214 coordinated strategy developed by a drug court team under s.



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215 397.334(4) ~~s. 397.334(3)~~. The coordinated strategy may include a
216 protocol of sanctions that may be imposed upon the participant
217 for noncompliance with program rules. The protocol of sanctions
218 may include, but is not limited to, placement in a substance
219 abuse treatment program offered by a licensed service provider
220 as defined in s. 397.311 or in a jail-based treatment program or
221 serving a period of incarceration within the time limits
222 established for contempt of court. The coordinated strategy must
223 be provided in writing to the participant before the participant
224 agrees to enter into a pretrial treatment-based drug court
225 program or other pretrial intervention program. Any person whose
226 charges are dismissed after successful completion of the
227 treatment-based drug court program, if otherwise eligible, may
228 have his or her arrest record and plea of nolo contendere to the
229 dismissed charges expunged under s. 943.0585.

230 (2) At the end of the pretrial intervention period, the
231 court shall consider the recommendation of the treatment program
232 and the recommendation of the state attorney as to disposition
233 of the pending charges. The court shall determine, by written
234 finding, whether the defendant successfully completed the
235 pretrial intervention program. Notwithstanding the coordinated
236 strategy developed by a drug court team pursuant to s.
237 397.334(4) ~~s. 397.334(3)~~, if the court finds that the defendant
238 has not successfully completed the pretrial intervention
239 program, the court may order the person to continue in education
240 and treatment or return the charges to the criminal docket for
241 prosecution. The court shall dismiss the charges upon finding
242 that the defendant has successfully completed the pretrial
243 intervention program.



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244 Section 7. Section 948.20, Florida Statutes, is amended to
245 read:

246 948.20 Drug offender probation.—If it appears to the court
247 upon a hearing that the defendant is a chronic substance abuser
248 whose criminal conduct is a violation of s. 893.13(2) (a) or
249 (6) (a), or other nonviolent felony if such nonviolent felony is
250 committed on or after July 1, 2009, and notwithstanding s.
251 921.0024 the defendant's Criminal Punishment Code scoresheet
252 total sentence points are 52 points or fewer, the court may
253 either adjudge the defendant guilty or stay and withhold the
254 adjudication of guilt. ~~and,~~ In either case, the court ~~it~~ may
255 also stay and withhold the imposition of sentence and place the
256 defendant on drug offender probation or into a postadjudicatory
257 treatment-based drug court program if the defendant otherwise
258 qualifies. As used in this section, the term "nonviolent felony"
259 means a third-degree felony violation under chapter 810 or any
260 other felony offense that is not a forcible felony as defined in
261 s. 776.08.

262 (1) The Department of Corrections shall develop and
263 administer a drug offender probation program which emphasizes a
264 combination of treatment and intensive community supervision
265 approaches and which includes provision for supervision of
266 offenders in accordance with a specific treatment plan. The
267 program may include the use of graduated sanctions consistent
268 with the conditions imposed by the court. Drug offender
269 probation status shall include surveillance and random drug
270 testing, and may include those measures normally associated with
271 community control, except that specific treatment conditions and
272 other treatment approaches necessary to monitor this population



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273 may be ordered.

274 (2) Offenders placed on drug offender probation are subject
275 to revocation of probation as provided in s. 948.06.

276 Section 8. Subsections (2) and (3) of section 985.345,
277 Florida Statutes, are amended to read:

278 985.345 Delinquency pretrial intervention program.—

279 (2) While enrolled in a delinquency pretrial intervention
280 program authorized by this section, a child is subject to a
281 coordinated strategy developed by a drug court team under s.
282 397.334(4) ~~s. 397.334(3)~~. The coordinated strategy may include a
283 protocol of sanctions that may be imposed upon the child for
284 noncompliance with program rules. The protocol of sanctions may
285 include, but is not limited to, placement in a substance abuse
286 treatment program offered by a licensed service provider as
287 defined in s. 397.311 or serving a period of secure detention
288 under this chapter. The coordinated strategy must be provided in
289 writing to the child before the child agrees to enter the
290 pretrial treatment-based drug court program or other pretrial
291 intervention program. Any child whose charges are dismissed
292 after successful completion of the treatment-based drug court
293 program, if otherwise eligible, may have his or her arrest
294 record and plea of nolo contendere to the dismissed charges
295 expunged under s. 943.0585.

296 (3) At the end of the delinquency pretrial intervention
297 period, the court shall consider the recommendation of the state
298 attorney and the program administrator as to disposition of the
299 pending charges. The court shall determine, by written finding,
300 whether the child has successfully completed the delinquency
301 pretrial intervention program. Notwithstanding the coordinated



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302 strategy developed by a drug court team pursuant to s.
303 397.334(4) ~~s. 397.334(3)~~, if the court finds that the child has
304 not successfully completed the delinquency pretrial intervention
305 program, the court may order the child to continue in an
306 education, treatment, or urine monitoring program if resources
307 and funding are available or order that the charges revert to
308 normal channels for prosecution. The court may dismiss the
309 charges upon a finding that the child has successfully completed
310 the delinquency pretrial intervention program.

311 Section 9. The Legislature intends to monitor and evaluate
312 the implementation and effectiveness of postadjudicatory
313 treatment-based drug court programs, particularly as they
314 identify and serve offenders pursuant to ss. 948.01(7) and
315 948.06(2)(i), Florida Statutes. The Office of Program Policy
316 Analysis and Government Accountability shall evaluate the
317 effectiveness of postadjudicatory treatment-based drug court
318 programs and issue a report of its findings and recommendations
319 to the Legislature by October 1, 2010.

320 Section 10. This act shall take effect July 1, 2009.

321
322 ===== T I T L E A M E N D M E N T =====

323 And the title is amended as follows:

324 Delete everything before the enacting clause
325 and insert:

326 A bill to be entitled
327 An act relating to postadjudicatory and pretrial
328 treatment-based drug court programs; amending s.
329 397.334, F.S.; specifying criteria that a court must
330 consider before sentencing a person to a



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331 postadjudicatory treatment-based drug court program;
332 providing for the judge presiding over a program to
333 hear violations of probation or community control by
334 program participants; requiring circuit courts to
335 report data relating to postadjudicatory treatment-
336 based drug court programs to the Office of the State
337 Courts Administrator; amending s. 921.0026, F.S.;
338 providing that a court may depart from a lowest
339 permissible sentence if the defendant is amenable to a
340 drug court program and is otherwise qualified;
341 amending s. 948.01, F.S.; authorizing a court to place
342 certain nonviolent felony offenders who are on
343 probation or community control into a postadjudicatory
344 treatment-based drug court program; amending s.
345 948.06, F.S.; authorizing a court to place certain
346 nonviolent felony offenders who violate their
347 probation or community control into a postadjudicatory
348 treatment-based drug court program; amending s.
349 948.08, F.S.; authorizing a court to place certain
350 nonviolent felony offenders into a pretrial substance
351 abuse education and treatment intervention program;
352 conforming cross-references; amending s. 948.20, F.S.;
353 authorizing a court to place certain chronic substance
354 abusers who are nonviolent felony offenders into a
355 postadjudicatory treatment-based drug court program;
356 amending ss. 948.16 and 948.345, F.S.; conforming
357 cross-references; providing legislative intent with
358 respect to monitoring the programs; requiring that the
359 Office of Program Policy Analysis and Government



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Accountability evaluate the programs and report to the
Legislature; providing an effective date.