

By the Committee on Criminal and Civil Justice Appropriations;
and Senator Crist

604-04041-09

20091726c1

1 A bill to be entitled
2 An act relating to postadjudicatory treatment-based
3 drug court programs; amending s. 397.334, F.S.;
4 specifying criteria that a court must consider before
5 sentencing a person to a postadjudicatory treatment-
6 based drug court program; providing for the judge
7 presiding over a program to hear violations of
8 probation or community control by program
9 participants; requiring circuit courts to report data
10 relating to postadjudicatory treatment-based drug
11 court programs to the Office of the State Courts
12 Administrator; providing legislative intent with
13 respect to monitoring the programs; requiring that the
14 Office of Program Policy Analysis and Government
15 Accountability evaluate the programs and report to the
16 Legislature; amending s. 921.0026, F.S.; specifying
17 that substance abuse or addiction is an additional
18 circumstance justifying a departure from a sentence if
19 the defendant is amenable to a drug court program and
20 is otherwise qualified; amending s. 948.01, F.S.;
21 authorizing a court to place certain nonviolent felony
22 offenders who are on probation or community control
23 into a postadjudicatory treatment-based drug court
24 program; amending s. 948.06, F.S.; authorizing a court
25 to place certain nonviolent felony offenders who
26 violate their on probation or community control into a
27 postadjudicatory treatment-based drug court program
28 amending s. 948.20, F.S.; authorizing a court to place
29 certain chronic substance abusers who are a nonviolent

604-04041-09

20091726c1

30 felony offender into a postadjudicatory treatment-
31 based drug court program; amending ss. 948.08, 948.16,
32 and 948.345, F.S.; conforming-cross references;
33 providing an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Present subsections (3) through (8) of section
38 397.334, Florida Statutes, are renumbered as subsections (4)
39 through (9), respectively, a new subsection (3) is added to that
40 section, present subsection (5) is amended, and subsection (10)
41 is added to that section; to read:

42 397.334 Treatment-based drug court programs.—

43 (3) (a) Entry into any postadjudicatory treatment-based drug
44 court program as a condition of probation or community control,
45 pursuant to s. 948.01, must be based upon the sentencing court's
46 assessment of the defendant's criminal history, substance abuse
47 screening outcome, amenability to the services of the program,
48 total sentence points, the consent of the state attorney and the
49 victim, if any, and the defendant's agreement to enter the
50 program.

51 (b) A probationer who is sentenced to a postadjudicatory
52 drug court program and who, while a drug court participant, is
53 the subject of a violation of probation or community control
54 under s. 948.06, based solely upon a failed or suspect substance
55 abuse test administered pursuant to s. 948.01 or s. 948.03,
56 shall have the violation of probation or community control heard
57 by the judge presiding over the postadjudicatory drug court
58 program. The judge shall dispose of any such violation, after a

604-04041-09

20091726c1

59 hearing on or admission of the violation, as he or she deems
60 appropriate if the resulting sentence or conditions are lawful.

61 (6) (a) ~~(5)~~ Contingent upon an annual appropriation by the
62 Legislature, each judicial circuit shall establish, at a
63 minimum, one coordinator position for the treatment-based drug
64 court program within the state courts system to coordinate the
65 responsibilities of the participating agencies and service
66 providers. Each coordinator shall provide direct support to the
67 treatment-based drug court program by providing coordination
68 between the multidisciplinary team and the judiciary, providing
69 case management, monitoring compliance of the participants in
70 the treatment-based drug court program with court requirements,
71 and providing program evaluation and accountability.

72 (b) Each circuit shall report sufficient client-level and
73 programmatic data to the Office of State Courts Administrator
74 annually for purposes of program evaluation. Client-level data
75 includes primary offenses that resulted in drug court referral
76 or sentence, treatment compliance, completion status and reasons
77 for failure to complete, offenses committed during treatment and
78 sanctions imposed, frequency of court appearances, and units of
79 service. Programmatic data includes referral and screening
80 procedures, eligibility criteria, type and duration of treatment
81 offered, and residential treatment resources.

82 (10) The Legislature intends to monitor and evaluate the
83 implementation and effectiveness of postadjudicatory treatment-
84 based drug court programs, particularly as they identify and
85 serve offenders pursuant to ss. 948.01(7) and 948.06(2)(i). The
86 Office of Program Policy Analysis and Government Accountability
87 shall evaluate the effectiveness of postadjudicatory treatment-

604-04041-09

20091726c1

88 based drug court programs and issue a report of its findings and
89 recommendations to the Legislature by October 1, 2010.

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

93 921.0026 Mitigating circumstances.—This section applies to
94 any felony offense, except any capital felony, committed on or
95 after October 1, 1998.

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

99 (m) The defendant's substance abuse or addiction, if the
100 offense is a nonviolent felony and the court determines that the
101 defendant is amenable to the services of a postadjudicatory
102 treatment-based drug court program and is otherwise qualified to
103 participate in the program as part of the sentence. As used in
104 this paragraph, the term "nonviolent felony" means a third-
105 degree felony violation under chapter 810 or any other felony
106 offense that is not a forcible felony as defined in s. 776.08.

107 (3) The defendant's ~~substance abuse or addiction, including~~
108 intoxication at the time of the offense, is not a mitigating
109 factor under subsection (2) and does not, under any
110 circumstances, justify a downward departure from the permissible
111 sentencing range.

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

114 948.01 When court may place defendant on probation or into
115 community control.—

116 (7) (a) The sentencing court may place the defendant into a

604-04041-09

20091726c1

117 postadjudicatory treatment-based drug court program if the total
118 sentence points under s. 921.0024 are 60 points or fewer and the
119 defendant is a nonviolent felony offender, amenable to substance
120 abuse treatment, and otherwise qualifies under s. 397.334(3).
121 The satisfactory completion of the program shall be a condition
122 of the defendant's probation or community control. As used in
123 this subsection, the term "nonviolent felony" means a third-
124 degree felony violation under chapter 810 or any other felony
125 offense that is not a forcible felony as defined in s. 776.08.

126 (b) The defendant must be fully advised of the purpose of
127 the program and the defendant must agree to enter the program.
128 The original sentencing court shall relinquish jurisdiction of
129 the defendant's case to the postadjudicatory drug court program
130 until the defendant is no longer active in the program, the case
131 is returned to the sentencing court due to the defendant's
132 termination from the program, or the defendant's sentence is
133 completed.

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

136 948.06 Violation of probation or community control;
137 revocation; modification; continuance; failure to pay
138 restitution or cost of supervision.-

139 (2)

140 (i)1. The court may order the offender to successfully
141 complete a postadjudicatory treatment-based drug court program
142 if:

143 a. The court finds or the offender admits that the offender
144 has violated his or her community control or probation and the
145 violation was due only to a failed or suspect substance abuse

604-04041-09

20091726c1

146 test;

147 b. The offender's Criminal Punishment Code scoresheet total
148 is 60 points or fewer after including points for the violation;

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

153 d. The court determines that the offender is amenable to
154 the services of a postadjudicatory treatment-based drug court
155 program;

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

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

160 2. After the court orders the modification of community
161 control or probation, the original sentencing court shall
162 relinquish jurisdiction of the offender's case to the
163 postadjudicatory treatment-based drug court program until the
164 offender remains active in the program, the case is returned to
165 the sentencing court due to the offender's termination from the
166 program, or the offender's sentence is completed.

167 Section 5. Section 948.20, Florida Statutes, is amended to
168 read:

169 948.20 Drug offender probation.—If it appears to the court
170 upon a hearing that the defendant is a chronic substance abuser
171 whose criminal conduct is a violation of s. 893.13(2) (a) or
172 (6) (a), or other nonviolent felony, the court may either adjudge
173 the defendant guilty or stay and withhold the adjudication of
174 guilt. ~~and,~~ In either case, the court ~~it~~ may also stay and

604-04041-09

20091726c1

175 withhold the imposition of sentence and place the defendant on
176 drug offender probation or into a postadjudicatory treatment-
177 based drug court program if the defendant otherwise qualifies.
178 As used in this section, the term "nonviolent felony" means a
179 third-degree felony violation under chapter 810 or any other
180 felony offense that is not a forcible felony as defined in s.
181 776.08.

182 (1) The Department of Corrections shall develop and
183 administer a drug offender probation program which emphasizes a
184 combination of treatment and intensive community supervision
185 approaches and which includes provision for supervision of
186 offenders in accordance with a specific treatment plan. The
187 program may include the use of graduated sanctions consistent
188 with the conditions imposed by the court. Drug offender
189 probation status shall include surveillance and random drug
190 testing, and may include those measures normally associated with
191 community control, except that specific treatment conditions and
192 other treatment approaches necessary to monitor this population
193 may be ordered.

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

196 Section 6. Paragraphs (b) and (c) of subsection (6) of
197 section 948.08, Florida Statutes, are amended to read:

198 948.08 Pretrial intervention program.—

199 (6)

200 (b) While enrolled in a pretrial intervention program
201 authorized by this subsection, the participant is subject to a
202 coordinated strategy developed by a drug court team under s.
203 397.334(4) ~~s. 397.334(3)~~.

604-04041-09

20091726c1

204 The coordinated strategy may include a protocol of
205 sanctions that may be imposed upon the participant for
206 noncompliance with program rules. The protocol of sanctions may
207 include, but is not limited to, placement in a substance abuse
208 treatment program offered by a licensed service provider as
209 defined in s. 397.311 or in a jail-based treatment program or
210 serving a period of incarceration within the time limits
211 established for contempt of court. The coordinated strategy must
212 be provided in writing to the participant before the participant
213 agrees to enter into a pretrial treatment-based drug court
214 program or other pretrial intervention program. Any person whose
215 charges are dismissed after successful completion of the
216 treatment-based drug court program, if otherwise eligible, may
217 have his or her arrest record and plea of nolo contendere to the
218 dismissed charges expunged under s. 943.0585.

219 (c) At the end of the pretrial intervention period, the
220 court shall consider the recommendation of the administrator
221 pursuant to subsection (5) and the recommendation of the state
222 attorney as to disposition of the pending charges. The court
223 shall determine, by written finding, whether the defendant has
224 successfully completed the pretrial intervention program.
225 Notwithstanding the coordinated strategy developed by a drug
226 court team pursuant to s. 397.334(4) ~~s. 397.334(3)~~, if the court
227 finds that the defendant has not successfully completed the
228 pretrial intervention program, the court may order the person to
229 continue in education and treatment, which may include substance
230 abuse treatment programs offered by licensed service providers
231 as defined in s. 397.311 or jail-based treatment programs, or
232 order that the charges revert to normal channels for

604-04041-09

20091726c1

233 prosecution. The court shall dismiss the charges upon a finding
234 that the defendant has successfully completed the pretrial
235 intervention program.

236 Section 7. Paragraph (b) of subsection (1) and subsection
237 (2) of section 948.16, Florida Statutes, is amended to read:

238 948.16 Misdemeanor pretrial substance abuse education and
239 treatment intervention program.—

240 (1)

241 (b) While enrolled in a pretrial intervention program
242 authorized by this section, the participant is subject to a
243 coordinated strategy developed by a drug court team under s.
244 397.334(4) ~~s. 397.334(3)~~. The coordinated strategy may include a
245 protocol of sanctions that may be imposed upon the participant
246 for noncompliance with program rules. The protocol of sanctions
247 may include, but is not limited to, placement in a substance
248 abuse treatment program offered by a licensed service provider
249 as defined in s. 397.311 or in a jail-based treatment program or
250 serving a period of incarceration within the time limits
251 established for contempt of court. The coordinated strategy must
252 be provided in writing to the participant before the participant
253 agrees to enter into a pretrial treatment-based drug court
254 program or other pretrial intervention program. Any person whose
255 charges are dismissed after successful completion of the
256 treatment-based drug court program, if otherwise eligible, may
257 have his or her arrest record and plea of nolo contendere to the
258 dismissed charges expunged under s. 943.0585.

259 (2) At the end of the pretrial intervention period, the
260 court shall consider the recommendation of the treatment program
261 and the recommendation of the state attorney as to disposition

604-04041-09

20091726c1

262 of the pending charges. The court shall determine, by written
263 finding, whether the defendant successfully completed the
264 pretrial intervention program. Notwithstanding the coordinated
265 strategy developed by a drug court team pursuant to s.
266 397.334(4) ~~s. 397.334(3)~~, if the court finds that the defendant
267 has not successfully completed the pretrial intervention
268 program, the court may order the person to continue in education
269 and treatment or return the charges to the criminal docket for
270 prosecution. The court shall dismiss the charges upon finding
271 that the defendant has successfully completed the pretrial
272 intervention program.

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

275 985.345 Delinquency pretrial intervention program.—

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

604-04041-09

20091726c1

291 record and plea of nolo contendere to the dismissed charges
292 expunged under s. 943.0585.

293 (3) At the end of the delinquency pretrial intervention
294 period, the court shall consider the recommendation of the state
295 attorney and the program administrator as to disposition of the
296 pending charges. The court shall determine, by written finding,
297 whether the child has successfully completed the delinquency
298 pretrial intervention program. Notwithstanding the coordinated
299 strategy developed by a drug court team pursuant to s.
300 397.334(4) ~~s. 397.334(3)~~, if the court finds that the child has
301 not successfully completed the delinquency pretrial intervention
302 program, the court may order the child to continue in an
303 education, treatment, or urine monitoring program if resources
304 and funding are available or order that the charges revert to
305 normal channels for prosecution. The court may dismiss the
306 charges upon a finding that the child has successfully completed
307 the delinquency pretrial intervention program.

308 Section 9. This act shall take effect July 1, 2009.