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1                   A bill to be entitled  
2     An act relating to postadjudicatory and pretrial  
3     treatment-based drug court programs; amending s.  
4     397.334, F.S.; specifying criteria that a court must  
5     consider before sentencing a person to a  
6     postadjudicatory treatment-based drug court program;  
7     providing for the judge presiding over a program to  
8     hear violations of probation or community control by  
9     program participants; requiring circuit courts to  
10    report data relating to postadjudicatory treatment-  
11    based drug court programs to the Office of the State  
12    Courts Administrator; amending s. 921.0026, F.S.;  
13    providing that a court may depart from a lowest  
14    permissible sentence if the defendant is amenable to a  
15    drug court program and is otherwise qualified;  
16    amending s. 948.01, F.S.; authorizing a court to place  
17    certain nonviolent felony offenders who are on  
18    probation or community control into a postadjudicatory  
19    treatment-based drug court program; amending s.  
20    948.06, F.S.; authorizing a court to place certain  
21    nonviolent felony offenders who violate their  
22    probation or community control into a postadjudicatory  
23    treatment-based drug court program; amending s.  
24    948.08, F.S.; authorizing a court to place certain  
25    nonviolent felony offenders into a pretrial substance  
26    abuse education and treatment intervention program;  
27    conforming cross-references; amending s. 948.20, F.S.;  
28    authorizing a court to place certain chronic substance  
29    abusers who are nonviolent felony offenders into a

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30 postadjudicatory treatment-based drug court program;  
31 amending ss. 948.16 and 948.345, F.S.; conforming  
32 cross-references; providing legislative intent with  
33 respect to monitoring the programs; requiring that the  
34 Office of Program Policy Analysis and Government  
35 Accountability evaluate the programs and report to the  
36 Legislature; providing an effective date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

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

45 397.334 Treatment-based drug court programs.—

46 (3) (a) Entry into any postadjudicatory treatment-based drug  
47 court program as a condition of probation or community control  
48 pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based  
49 upon the sentencing court's assessment of the defendant's  
50 criminal history, substance abuse screening outcome, amenability  
51 to the services of the program, total sentence points, the  
52 recommendation of the state attorney and the victim, if any, and  
53 the defendant's agreement to enter the program.

54 (b) An offender who is sentenced to a postadjudicatory drug  
55 court program and who, while a drug court participant, is the  
56 subject of a violation of probation or community control under  
57 s. 948.06, based solely upon a failed or suspect substance abuse  
58 test administered pursuant to s. 948.01 or s. 948.03, shall have

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59 the violation of probation or community control heard by the  
60 judge presiding over the postadjudicatory drug court program.  
61 The judge shall dispose of any such violation, after a hearing  
62 on or admission of the violation, as he or she deems appropriate  
63 if the resulting sentence or conditions are lawful.

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

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

86 Section 2. Subsection (3) of section 921.0026, Florida  
87 Statutes, is amended, and paragraph (m) is added to subsection

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88 (2) of that section, to read:

89 921.0026 Mitigating circumstances.—This section applies to  
90 any felony offense, except any capital felony, committed on or  
91 after October 1, 1998.

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

95 (m) The defendant's offense is a nonviolent felony, the  
96 defendant's Criminal Punishment Code scoresheet total sentence  
97 points under s. 921.0024 are 52 points or fewer, and the court  
98 determines that the defendant is amenable to the services of a  
99 postadjudicatory treatment-based drug court program and is  
100 otherwise qualified to participate in the program as part of the  
101 sentence. For purposes of this paragraph, the term "nonviolent  
102 felony" has the same meaning as provided in s. 948.08(6).

103 (3) Except as provided in paragraph (2) (m), the defendant's  
104 substance abuse or addiction, including intoxication at the time  
105 of the offense, is not a mitigating factor under subsection (2)  
106 and does not, under any circumstances, justify a downward  
107 departure from the permissible sentencing range.

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

110 948.01 When court may place defendant on probation or into  
111 community control.—

112 (7) (a) Notwithstanding s. 921.0024 and effective for  
113 offenses committed on or after July 1, 2009, the sentencing  
114 court may place the defendant into a postadjudicatory treatment-  
115 based drug court program if the defendant's Criminal Punishment  
116 Code scoresheet total sentence points under s. 921.0024 are 52

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

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

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

135 948.06 Violation of probation or community control;  
136 revocation; modification; continuance; failure to pay  
137 restitution or cost of supervision.—

138 (2)

139 (i)1. Notwithstanding s. 921.0024 and effective for  
140 offenses committed on or after July 1, 2009, the court may order  
141 the defendant to successfully complete a postadjudicatory  
142 treatment-based drug court program 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

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146 test;

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

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

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

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

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

161 2. After the court orders the modification of community  
162 control or probation, the original sentencing court shall  
163 relinquish jurisdiction of the offender's case to the  
164 postadjudicatory treatment-based drug court program until the  
165 offender is no longer active in the program, the case is  
166 returned to the sentencing court due to the offender's  
167 termination from the program for failure to comply with the  
168 terms thereof, or the offender's sentence is completed.

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

171 948.08 Pretrial intervention program.—

172 (6) (a) For purposes of this subsection, the term  
173 "nonviolent felony" means a third-degree felony violation of  
174 chapter 810 or any other felony offense that is not a forcible

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175 felony as defined in s. 776.08. Notwithstanding any provision of  
176 this section, a person who is charged with a nonviolent felony  
177 and is identified as having a substance abuse problem or is  
178 charged with a felony of the second or third degree for purchase  
179 or possession of a controlled substance under chapter 893,  
180 prostitution, tampering with evidence, solicitation for purchase  
181 of a controlled substance, or obtaining a prescription by fraud;  
182 who has not been charged with a crime involving violence,  
183 including, but not limited to, murder, sexual battery, robbery,  
184 carjacking, home-invasion robbery, or any other crime involving  
185 violence; and who has not previously been convicted of a felony  
186 ~~nor been admitted to a felony pretrial program referred to in~~  
187 ~~this section~~ is eligible for voluntary admission into a pretrial  
188 substance abuse education and treatment intervention program,  
189 including a treatment-based drug court program established  
190 pursuant to s. 397.334, approved by the chief judge of the  
191 circuit, for a period of not less than 1 year in duration, upon  
192 motion of either party or the court's own motion, except:

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

198 2. If the state attorney believes that the facts and  
199 circumstances of the case suggest the defendant's involvement in  
200 the dealing and selling of controlled substances, the court  
201 shall hold a preadmission hearing. If the state attorney  
202 establishes, by a preponderance of the evidence at such hearing,  
203 that the defendant was involved in the dealing or selling of

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204 controlled substances, the court shall deny the defendant's  
205 admission into a pretrial intervention program.

206 (b) While enrolled in a pretrial intervention program  
207 authorized by this subsection, the participant is subject to a  
208 coordinated strategy developed by a drug court team under s.  
209 397.334(4) ~~s. 397.334(3)~~. The coordinated strategy may include a  
210 protocol of sanctions that may be imposed upon the participant  
211 for noncompliance with program rules. The protocol of sanctions  
212 may include, but is not limited to, placement in a substance  
213 abuse treatment program offered by a licensed service provider  
214 as defined in s. 397.311 or in a jail-based treatment program or  
215 serving a period of incarceration within the time limits  
216 established for contempt of court. The coordinated strategy must  
217 be provided in writing to the participant before the participant  
218 agrees to enter into a pretrial treatment-based drug court  
219 program or other pretrial intervention program. Any person whose  
220 charges are dismissed after successful completion of the  
221 treatment-based drug court program, if otherwise eligible, may  
222 have his or her arrest record and plea of nolo contendere to the  
223 dismissed charges expunged under s. 943.0585.

224 (c) At the end of the pretrial intervention period, the  
225 court shall consider the recommendation of the administrator  
226 pursuant to subsection (5) and the recommendation of the state  
227 attorney as to disposition of the pending charges. The court  
228 shall determine, by written finding, whether the defendant has  
229 successfully completed the pretrial intervention program.  
230 Notwithstanding the coordinated strategy developed by a drug  
231 court team pursuant to s. 397.334(4) ~~s. 397.334(3)~~, if the court  
232 finds that the defendant has not successfully completed the



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233 pretrial intervention program, the court may order the person to  
234 continue in education and treatment, which may include substance  
235 abuse treatment programs offered by licensed service providers  
236 as defined in s. 397.311 or jail-based treatment programs, or  
237 order that the charges revert to normal channels for  
238 prosecution. The court shall dismiss the charges upon a finding  
239 that the defendant has successfully completed the pretrial  
240 intervention program.

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

243 948.16 Misdemeanor pretrial substance abuse education and  
244 treatment intervention program.—

245 (1)

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

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262 have his or her arrest record and plea of nolo contendere to the  
263 dismissed charges expunged under s. 943.0585.

264 (2) At the end of the pretrial intervention period, the  
265 court shall consider the recommendation of the treatment program  
266 and the recommendation of the state attorney as to disposition  
267 of the pending charges. The court shall determine, by written  
268 finding, whether the defendant successfully completed the  
269 pretrial intervention program. Notwithstanding the coordinated  
270 strategy developed by a drug court team pursuant to s.  
271 397.334(4) ~~s. 397.334(3)~~, if the court finds that the defendant  
272 has not successfully completed the pretrial intervention  
273 program, the court may order the person to continue in education  
274 and treatment or return the charges to the criminal docket for  
275 prosecution. The court shall dismiss the charges upon finding  
276 that the defendant has successfully completed the pretrial  
277 intervention program.

278 Section 7. Section 948.20, Florida Statutes, is amended to  
279 read:

280 948.20 Drug offender probation.—If it appears to the court  
281 upon a hearing that the defendant is a chronic substance abuser  
282 whose criminal conduct is a violation of s. 893.13(2)(a) or  
283 (6)(a), or other nonviolent felony if such nonviolent felony is  
284 committed on or after July 1, 2009, and notwithstanding s.  
285 921.0024 the defendant's Criminal Punishment Code scoresheet  
286 total sentence points are 52 points or fewer, the court may  
287 either adjudge the defendant guilty or stay and withhold the  
288 adjudication of guilt. ~~and,~~ In either case, the court ~~it~~ may  
289 also stay and withhold the imposition of sentence and place the  
290 defendant on drug offender probation or into a postadjudicatory

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291 treatment-based drug court program if the defendant otherwise  
292 qualifies. As used in this section, the term "nonviolent felony"  
293 means a third-degree felony violation under chapter 810 or any  
294 other felony offense that is not a forcible felony as defined in  
295 s. 776.08.

296 (1) The Department of Corrections shall develop and  
297 administer a drug offender probation program which emphasizes a  
298 combination of treatment and intensive community supervision  
299 approaches and which includes provision for supervision of  
300 offenders in accordance with a specific treatment plan. The  
301 program may include the use of graduated sanctions consistent  
302 with the conditions imposed by the court. Drug offender  
303 probation status shall include surveillance and random drug  
304 testing, and may include those measures normally associated with  
305 community control, except that specific treatment conditions and  
306 other treatment approaches necessary to monitor this population  
307 may be ordered.

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

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

312 985.345 Delinquency pretrial intervention program.—

313 (2) While enrolled in a delinquency pretrial intervention  
314 program authorized by this section, a child is subject to a  
315 coordinated strategy developed by a drug court team under s.  
316 397.334(4) ~~s. 397.334(3)~~. The coordinated strategy may include a  
317 protocol of sanctions that may be imposed upon the child for  
318 noncompliance with program rules. The protocol of sanctions may  
319 include, but is not limited to, placement in a substance abuse

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320 treatment program offered by a licensed service provider as  
321 defined in s. 397.311 or serving a period of secure detention  
322 under this chapter. The coordinated strategy must be provided in  
323 writing to the child before the child agrees to enter the  
324 pretrial treatment-based drug court program or other pretrial  
325 intervention program. Any child whose charges are dismissed  
326 after successful completion of the treatment-based drug court  
327 program, if otherwise eligible, may have his or her arrest  
328 record and plea of nolo contendere to the dismissed charges  
329 expunged under s. 943.0585.

330 (3) At the end of the delinquency pretrial intervention  
331 period, the court shall consider the recommendation of the state  
332 attorney and the program administrator as to disposition of the  
333 pending charges. The court shall determine, by written finding,  
334 whether the child has successfully completed the delinquency  
335 pretrial intervention program. Notwithstanding the coordinated  
336 strategy developed by a drug court team pursuant to s.  
337 397.334(4) ~~s. 397.334(3)~~, if the court finds that the child has  
338 not successfully completed the delinquency pretrial intervention  
339 program, the court may order the child to continue in an  
340 education, treatment, or urine monitoring program if resources  
341 and funding are available or order that the charges revert to  
342 normal channels for prosecution. The court may dismiss the  
343 charges upon a finding that the child has successfully completed  
344 the delinquency pretrial intervention program.

345 Section 9. The Legislature intends to monitor and evaluate  
346 the implementation and effectiveness of postadjudicatory  
347 treatment-based drug court programs, particularly as they  
348 identify and serve offenders pursuant to ss. 948.01(7) and

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349 948.06(2)(i), Florida Statutes. The Office of Program Policy  
350 Analysis and Government Accountability shall evaluate the  
351 effectiveness of postadjudicatory treatment-based drug court  
352 programs and issue a report of its findings and recommendations  
353 to the Legislature by October 1, 2010.

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