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1 A bill to be entitled
2 An act relating to drug court programs; amending s.
3 397.334, F.S.; specifying criteria that a court must
4 consider before sentencing a person to a postadjudicatory
5 treatment-based drug court program; requiring the judge
6 presiding over a program to hear and dispose of violations
7 of probation or community control by program participants;
8 conforming a cross-reference; requiring circuit courts to
9 report certain data relating to drug court programs to the
10 Office of the State Courts Administrator; amending s.
11 921.0026, F.S.; specifying that a nonviolent felony
12 offense is a mitigating circumstance justifying a
13 departure from a sentence under certain circumstances;
14 amending s. 948.01, F.S.; authorizing a court to place
15 certain nonviolent felony offenders who are on probation
16 or community control into a postadjudicatory treatment-
17 based drug court program under certain circumstances;
18 amending s. 948.06, F.S.; authorizing a court to place
19 certain nonviolent felony offenders who violate their
20 probation or community control into a postadjudicatory
21 treatment-based drug court program under certain
22 circumstances; providing for jurisdiction over such
23 offenders; amending s. 948.08, F.S.; defining the term
24 "nonviolent felony"; 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. 948.16, F.S.;
28 conforming cross-references; amending s. 948.20, F.S.;

29 | authorizing courts to place certain chronic substance
 30 | abusers who are nonviolent felony offenders into a
 31 | postadjudicatory treatment-based drug court program under
 32 | certain circumstances; amending s. 985.345, F.S.;
 33 | conforming cross-references; requiring the Office of
 34 | Program Policy Analysis and Government Accountability to
 35 | evaluate certain drug court programs and submit a report
 36 | to the Legislature; providing an effective date.

37 |

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

39 |

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

45 | 397.334 Treatment-based drug court programs.--

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

53 | (b) A probationer who is sentenced to a postadjudicatory
 54 | treatment-based drug court program and who, while a drug court
 55 | participant, is the subject of a violation of probation or
 56 | community control under s. 948.06 based solely upon a failed or

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57 suspect substance abuse test administered pursuant to s. 948.01
58 or s. 948.03 shall have the violation of probation or community
59 control heard by the judge presiding over the postadjudicatory
60 drug court program. The judge shall dispose of any such
61 violation, after a hearing on or admission of the violation, as
62 he or she deems appropriate provided that the resulting sentence
63 or conditions are lawful.

64 (5)~~(4)~~ Treatment-based drug court programs may include
65 pretrial intervention programs as provided in ss. 948.08,
66 948.16, and 985.345, treatment-based drug court programs
67 authorized in chapter 39, postadjudicatory programs, and review
68 of the status of compliance or noncompliance of sentenced
69 offenders through a treatment-based drug court program. While
70 enrolled in a treatment-based drug court program, the
71 participant is subject to a coordinated strategy developed by a
72 drug court team under subsection (4) ~~(3)~~. The coordinated
73 strategy may include a protocol of sanctions that may be imposed
74 upon the participant for noncompliance with program rules. The
75 protocol of sanctions may include, but is not limited to,
76 placement in a substance abuse treatment program offered by a
77 licensed service provider as defined in s. 397.311 or in a jail-
78 based treatment program or serving a period of secure detention
79 under chapter 985 if a child or a period of incarceration within
80 the time limits established for contempt of court if an adult.
81 The coordinated strategy must be provided in writing to the
82 participant before the participant agrees to enter into a
83 treatment-based drug court program.

84 (6) (a)~~(5)~~ Contingent upon an annual appropriation by the

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85 Legislature, each judicial circuit shall establish, at a
86 minimum, one coordinator position for the treatment-based drug
87 court program within the state courts system to coordinate the
88 responsibilities of the participating agencies and service
89 providers. Each coordinator shall provide direct support to the
90 treatment-based drug court program by providing coordination
91 between the multidisciplinary team and the judiciary, providing
92 case management, monitoring compliance of the participants in
93 the treatment-based drug court program with court requirements,
94 and providing program evaluation and accountability.

95 (b) Each judicial circuit shall annually report sufficient
96 client-level and programmatic data for pretrial and
97 postadjudicatory treatment-based drug court programs to the
98 Office of State Courts Administrator for purposes of program
99 evaluation. Client-level data includes primary offenses that
100 resulted in drug court referral or sentence, treatment
101 compliance, completion status and reasons for failure to
102 complete, offenses committed during treatment and sanctions
103 imposed, frequency of court appearances, and units of service.
104 Programmatic data includes referral and screening procedures,
105 eligibility criteria, type and duration of treatment offered,
106 and residential treatment resources.

107 Section 2. Paragraph (m) is added to subsection (2) of
108 section 921.0026, Florida Statutes, and subsection (3) of that
109 section is amended, to read:

110 921.0026 Mitigating circumstances.--This section applies
111 to any felony offense, except any capital felony, committed on
112 or after October 1, 1998.

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

116 (m) The defendant's offense is a nonviolent felony and the
117 court determines that the defendant is amenable to the services
118 of a postadjudicatory treatment-based drug court program and is
119 otherwise qualified to participate in the program as part of the
120 sentence. For purposes of this paragraph, the term "nonviolent
121 felony" has the same meaning as provided in s. 948.08(6).

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

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

129 948.01 When court may place defendant on probation or into
130 community control.--

131 (7) (a) The sentencing court may place the defendant into a
132 postadjudicatory treatment-based drug court program if the total
133 sentence points under s. 921.0024 are 60 points or fewer and the
134 defendant is a nonviolent felony offender, is amenable to
135 substance abuse treatment, and otherwise qualifies under s.
136 397.334(3). The satisfactory completion of the program shall be
137 a condition of the defendant's probation or community control.
138 For purposes of this subsection, the term "nonviolent felony"
139 has the same meaning as provided in s. 948.08(6).

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140 (b) The defendant must be fully advised of the purpose of
141 the postadjudicatory treatment-based drug court program and must
142 agree to enter the program. The original sentencing court shall
143 relinquish jurisdiction over the defendant's case to the program
144 until the defendant is no longer active in the program, the case
145 is returned to the sentencing court due to the defendant's
146 termination from the program, or the defendant's sentence is
147 completed.

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

150 948.06 Violation of probation or community control;
151 revocation; modification; continuance; failure to pay
152 restitution or cost of supervision.--

153 (2)

154 (i)1. The court may order the offender to successfully
155 complete a postadjudicatory treatment-based drug court program
156 if:

157 a. The court finds or the offender admits that the
158 offender has violated his or her community control or probation
159 and the violation was due only to a failed or suspect substance
160 abuse test;

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

164 c. The underlying offense is a nonviolent felony. For
165 purposes of this paragraph, the term "nonviolent felony" has the
166 same meaning as provided in s. 948.08(6);

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167 d. The court determines that the offender is amenable to
168 the services of a postadjudicatory treatment-based drug court
169 program;

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

172 f. The offender is otherwise qualified to participate in
173 the program under s. 397.334(3).

174 2. After the court orders the modification of community
175 control or probation, the original sentencing court shall
176 relinquish jurisdiction over the offender's case to the
177 postadjudicatory treatment-based drug court program until the
178 offender no longer remains active in the program, the case is
179 returned to the sentencing court due to the offender's
180 termination from the program, or the offender's sentence is
181 completed.

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

184 948.08 Pretrial intervention program.--

185 (6) (a) For purposes of this subsection, the term
186 "nonviolent felony" means a third-degree felony violation of
187 chapter 810 or any other felony offense that is not a forcible
188 felony as defined in s. 776.08. Notwithstanding any provision of
189 this section, a person who is charged with a nonviolent felony
190 and is identified as having a substance abuse problem or is
191 charged with a felony of the second or third degree for purchase
192 or possession of a controlled substance under chapter 893,
193 prostitution, tampering with evidence, solicitation for purchase
194 of a controlled substance, or obtaining a prescription by fraud;

195 | who has not been charged with a crime involving violence,
 196 | including, but not limited to, murder, sexual battery, robbery,
 197 | carjacking, home-invasion robbery, or any other crime involving
 198 | violence; and who has not previously been convicted of a felony
 199 | ~~nor been admitted to a felony pretrial program referred to in~~
 200 | ~~this section~~ is eligible for voluntary admission into a pretrial
 201 | substance abuse education and treatment intervention program,
 202 | including a treatment-based drug court program established
 203 | pursuant to s. 397.334, approved by the chief judge of the
 204 | circuit, for a period of not less than 1 year in duration, upon
 205 | motion of either party or the court's own motion, except:

206 | 1. If a defendant was previously offered admission to a
 207 | pretrial substance abuse education and treatment intervention
 208 | program at any time prior to trial and the defendant rejected
 209 | that offer on the record, then the court or the state attorney
 210 | may deny the defendant's admission to such a program.

211 | 2. If the state attorney believes that the facts and
 212 | circumstances of the case suggest the defendant's involvement in
 213 | the dealing and selling of controlled substances, the court
 214 | shall hold a preadmission hearing. If the state attorney
 215 | establishes, by a preponderance of the evidence at such hearing,
 216 | that the defendant was involved in the dealing or selling of
 217 | controlled substances, the court shall deny the defendant's
 218 | admission into a pretrial intervention program.

219 | (b) While enrolled in a pretrial intervention program
 220 | authorized by this subsection, the participant is subject to a
 221 | coordinated strategy developed by a drug court team under s.
 222 | 397.334 (4) ~~(3)~~. The coordinated strategy may include a protocol

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

237 (c) At the end of the pretrial intervention period, the
238 court shall consider the recommendation of the administrator
239 pursuant to subsection (5) and the recommendation of the state
240 attorney as to disposition of the pending charges. The court
241 shall determine, by written finding, whether the defendant has
242 successfully completed the pretrial intervention program.
243 Notwithstanding the coordinated strategy developed by a drug
244 court team pursuant to s. 397.334(4)~~(3)~~, if the court finds that
245 the defendant has not successfully completed the pretrial
246 intervention program, the court may order the person to continue
247 in education and treatment, which may include substance abuse
248 treatment programs offered by licensed service providers as
249 defined in s. 397.311 or jail-based treatment programs, or order
250 that the charges revert to normal channels for prosecution. The

251 | court shall dismiss the charges upon a finding that the
 252 | defendant has successfully completed the pretrial intervention
 253 | program.

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

256 | 948.16 Misdemeanor pretrial substance abuse education and
 257 | treatment intervention program.--

258 | (1)

259 | (b) While enrolled in a pretrial intervention program
 260 | authorized by this section, the participant is subject to a
 261 | coordinated strategy developed by a drug court team under s.
 262 | 397.334 (4) ~~(3)~~. The coordinated strategy may include a protocol
 263 | of sanctions that may be imposed upon the participant for
 264 | noncompliance with program rules. The protocol of sanctions may
 265 | include, but is not limited to, placement in a substance abuse
 266 | treatment program offered by a licensed service provider as
 267 | defined in s. 397.311 or in a jail-based treatment program or
 268 | serving a period of incarceration within the time limits
 269 | established for contempt of court. The coordinated strategy must
 270 | be provided in writing to the participant before the participant
 271 | agrees to enter into a pretrial treatment-based drug court
 272 | program or other pretrial intervention program. Any person whose
 273 | charges are dismissed after successful completion of the
 274 | treatment-based drug court program, if otherwise eligible, may
 275 | have his or her arrest record and plea of nolo contendere to the
 276 | dismissed charges expunged under s. 943.0585.

277 | (2) At the end of the pretrial intervention period, the
 278 | court shall consider the recommendation of the treatment program

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279 and the recommendation of the state attorney as to disposition
 280 of the pending charges. The court shall determine, by written
 281 finding, whether the defendant successfully completed the
 282 pretrial intervention program. Notwithstanding the coordinated
 283 strategy developed by a drug court team pursuant to s.
 284 397.334 (4) ~~(3)~~, if the court finds that the defendant has not
 285 successfully completed the pretrial intervention program, the
 286 court may order the person to continue in education and
 287 treatment or return the charges to the criminal docket for
 288 prosecution. The court shall dismiss the charges upon finding
 289 that the defendant has successfully completed the pretrial
 290 intervention program.

291 Section 7. Section 948.20, Florida Statutes, is amended to
 292 read:

293 948.20 Drug offender probation.--If it appears to the
 294 court upon a hearing that the defendant is a chronic substance
 295 abuser whose criminal conduct is a violation of s. 893.13(2) (a)
 296 or (6) (a) or any other nonviolent felony, the court may either
 297 adjudge the defendant guilty or stay and withhold the
 298 adjudication of guilt. ~~and~~ In either case, the court ~~it~~ may
 299 also stay and withhold the imposition of sentence and place the
 300 defendant on drug offender probation or into a postadjudicatory
 301 treatment-based drug court program if the defendant otherwise
 302 qualifies. For purposes of this section, the term "nonviolent
 303 felony" has the same meaning as provided in s. 948.08(6).

304 (1) The Department of Corrections shall develop and
 305 administer a drug offender probation program which emphasizes a
 306 combination of treatment and intensive community supervision

307 approaches and which includes provision for supervision of
 308 offenders in accordance with a specific treatment plan. The
 309 program may include the use of graduated sanctions consistent
 310 with the conditions imposed by the court. Drug offender
 311 probation status shall include surveillance and random drug
 312 testing, and may include those measures normally associated with
 313 community control, except that specific treatment conditions and
 314 other treatment approaches necessary to monitor this population
 315 may be ordered.

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

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

320 985.345 Delinquency pretrial intervention program.--

321 (2) While enrolled in a delinquency pretrial intervention
 322 program authorized by this section, a child is subject to a
 323 coordinated strategy developed by a drug court team under s.
 324 397.334 (4) ~~(3)~~. The coordinated strategy may include a protocol
 325 of sanctions that may be imposed upon the child for
 326 noncompliance with program rules. The protocol of sanctions may
 327 include, but is not limited to, placement in a substance abuse
 328 treatment program offered by a licensed service provider as
 329 defined in s. 397.311 or serving a period of secure detention
 330 under this chapter. The coordinated strategy must be provided in
 331 writing to the child before the child agrees to enter the
 332 pretrial treatment-based drug court program or other pretrial
 333 intervention program. Any child whose charges are dismissed
 334 after successful completion of the treatment-based drug court

335 program, if otherwise eligible, may have his or her arrest
 336 record and plea of nolo contendere to the dismissed charges
 337 expunged under s. 943.0585.

338 (3) At the end of the delinquency pretrial intervention
 339 period, the court shall consider the recommendation of the state
 340 attorney and the program administrator as to disposition of the
 341 pending charges. The court shall determine, by written finding,
 342 whether the child has successfully completed the delinquency
 343 pretrial intervention program. Notwithstanding the coordinated
 344 strategy developed by a drug court team pursuant to s.
 345 397.334 (4) ~~(3)~~, if the court finds that the child has not
 346 successfully completed the delinquency pretrial intervention
 347 program, the court may order the child to continue in an
 348 education, treatment, or urine monitoring program if resources
 349 and funding are available or order that the charges revert to
 350 normal channels for prosecution. The court may dismiss the
 351 charges upon a finding that the child has successfully completed
 352 the delinquency pretrial intervention program.

353 Section 9. The Legislature intends to monitor and evaluate
 354 the implementation and effectiveness of pretrial and
 355 postadjudicatory treatment-based drug court programs,
 356 particularly as they target and serve offenders pursuant to ss.
 357 948.01(7) and 948.06(2)(i), Florida Statutes, as created by this
 358 act. The Office of Program Policy Analysis and Government
 359 Accountability is directed to evaluate the effectiveness of
 360 pretrial and postadjudicatory treatment-based drug court
 361 programs and issue a report of its findings and recommendations

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362 | to the President of the Senate and the Speaker of the House of
363 | Representatives by October 1, 2010.

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