

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

CS/HB 7139

2009

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

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.

CS/HB 7139

2009

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, the
117 defendant's total sentence points under s. 921.0024 are 52
118 points or fewer after including points for the violation, and
119 the court determines that the defendant is amenable to the
120 services of a postadjudicatory treatment-based drug court
121 program and is otherwise qualified to participate in the program
122 as part of the sentence. For purposes of this paragraph, the
123 term "nonviolent felony" has the same meaning as provided in s.
124 948.08(6).

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

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

132 948.01 When court may place defendant on probation or into
133 community control.--

134 (7)(a) The sentencing court may place the defendant into a
135 postadjudicatory treatment-based drug court program if the total
136 sentence points under s. 921.0024 are 52 points or fewer and the
137 defendant is a nonviolent felony offender, is amenable to
138 substance abuse treatment, and otherwise qualifies under s.
139 397.334(3). The satisfactory completion of the program shall be
140 a condition of the defendant's probation or community control.

141 For purposes of this subsection, the term "nonviolent felony"
 142 has the same meaning as provided in s. 948.08(6).

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 147 until the defendant is no longer active in the program, the case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

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

153 948.06 Violation of probation or community control;
 154 revocation; modification; continuance; failure to pay
 155 restitution or cost of supervision.--

156 (2)

157 (i)1. The court may order the offender to successfully
 158 complete a postadjudicatory treatment-based drug court program
 159 if:

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

164 b. The offender's total sentence points under s. 921.0024
 165 are 52 points or fewer after including points for the violation;

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

CS/HB 7139

2009

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

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

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

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

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

186 948.08 Pretrial intervention program.--

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

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

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

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

221 | (b) While enrolled in a pretrial intervention program
 222 | authorized by this subsection, the participant is subject to a
 223 | coordinated strategy developed by a drug court team under s.
 224 | 397.334 (4) ~~(3)~~. The coordinated strategy may include a protocol

CS/HB 7139

2009

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

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

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

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

258 | 948.16 Misdemeanor pretrial substance abuse education and
 259 | treatment intervention program.--

260 | (1)

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

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

CS/HB 7139

2009

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

293 Section 7. Section 948.20, Florida Statutes, is amended to
 294 read:

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

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

CS/HB 7139

2009

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

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

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

322 985.345 Delinquency pretrial intervention program.--

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

CS/HB 7139

2009

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

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

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

CS/HB 7139

2009

364 to the President of the Senate and the Speaker of the House of
365 Representatives by October 1, 2010.

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