

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1101 Misdemeanor Pretrial Substance Abuse Programs  
**SPONSOR(S):** Public Safety & Domestic Security Policy Committee and Waldman  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1694

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N, As CS	Cunningham	Cunningham
2)	Criminal & Civil Justice Policy Council	16 Y, 0 N	Cunningham	Havlicak
3)				
4)				
5)				

### SUMMARY ANALYSIS

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, F.S., and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. Persons who successfully complete such programs have their criminal charges dismissed. This may have a positive fiscal impact on local governments. Counties may need to expand their pretrial substance abuse education and treatment programs if more people are eligible to participate.

This bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,<sup>1</sup> and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,<sup>2</sup> for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.<sup>3</sup>

Participants in the program are subject to a coordinated strategy<sup>4</sup> developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider<sup>5</sup> or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.

At the end of the pretrial intervention period, the court must:

- Consider the recommendation of the treatment program;
- Consider the recommendation of the state attorney as to disposition of the pending charges; and

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<sup>1</sup> Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act.

<sup>2</sup> See s. 397.334, F.S.

<sup>3</sup> Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

<sup>4</sup> The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Section 948.16(1)(b), F.S.

<sup>5</sup> The term "licensed service provider" is defined in s. 397.311(17), F.S., as "a public agency under this chapter, a private for-profit or not-for-profit agency under this chapter, a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse services through one or more licensed service components."

- Determine, by written finding, whether the defendant successfully completed the pretrial intervention program.<sup>6</sup>

If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution. The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.<sup>7</sup>

### **Effect of the Bill**

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not previously been convicted of a felony *nor been admitted to a pretrial program*, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

**Section 2.** This bill takes effect July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>6</sup> Section 948.16(2), F.S.

<sup>7</sup> Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S. See s. 948.16(1)(b), F.S.

**D. FISCAL COMMENTS:**

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. Persons who successfully complete such programs have their criminal charges dismissed. This may have a positive fiscal impact on local governments. Counties may need to expand their pretrial substance abuse education and treatment programs if more people are eligible to participate.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2010, the Public Safety & Domestic Security Policy Committee adopted a strike-all amendment to the bill. The strike-all amendment removed language in the bill that would have allowed persons who have been charged with *any* misdemeanor violation of ch. 893, F.S., and who have not been previously convicted of a felony to participate in pretrial substance abuse education and treatment programs.

The bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.