

By the Committee on Criminal Justice; and Senators Wise and Fasano

591-02003-11

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1 A bill to be entitled
2 An act relating to treatment-based drug court
3 programs; amending s. 397.334, F.S.; requiring all
4 offenders sentenced to a postadjudicatory drug court
5 program who are drug court participants and who are
6 the subject of a violation of probation or community
7 control hearing under specified provisions to have the
8 violation of probation or community control heard by
9 the judge presiding over the drug court program;
10 providing that treatment-based drug court programs may
11 include postadjudicatory programs provided under
12 specified provisions; amending s. 921.0026, F.S.;
13 increasing the number of Criminal Punishment Code
14 scoresheet total sentence points that a defendant may
15 have and be eligible for a postadjudicatory treatment-
16 based drug court program; amending s. 948.01, F.S.;
17 increasing the number of Criminal Punishment Code
18 scoresheet total sentence points that a defendant may
19 have and be eligible for a postadjudicatory treatment-
20 based drug court program; amending s. 948.06, F.S.;
21 making defendants other than those who have violated
22 probation or community control by a failed or suspect
23 substance abuse test eligible for postadjudicatory
24 treatment-based drug court programs; increasing the
25 number of Criminal Punishment Code scoresheet total
26 sentence points that a defendant may have and be
27 eligible for a postadjudicatory treatment-based drug
28 court program; amending s. 948.20, F.S.; increasing
29 the number of Criminal Punishment Code scoresheet

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30 total sentence points that a defendant may have and be
31 eligible for a postadjudicatory treatment-based drug
32 court program; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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36 Section 1. Subsections (3) and (5) of section 397.334,
37 Florida Statutes, are amended to read:

38 397.334 Treatment-based drug court programs.—

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

47 (b) An offender who is sentenced to a postadjudicatory drug
48 court program and who, while a drug court participant, is the
49 subject of a violation of probation or community control under
50 s. 948.06, ~~based solely upon a failed or suspect substance abuse~~
51 ~~test administered pursuant to s. 948.01 or s. 948.03~~, shall have
52 the violation of probation or community control heard by the
53 judge presiding over the postadjudicatory drug court program.
54 The judge shall dispose of any such violation, after a hearing
55 on or admission of the violation, as he or she deems appropriate
56 if the resulting sentence or conditions are lawful.

57 (5) Treatment-based drug court programs may include
58 pretrial intervention programs as provided in ss. 948.08,

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59 948.16, and 985.345, treatment-based drug court programs
60 authorized in chapter 39, postadjudicatory programs as provided
61 in ss. 948.01, 948.06, and 948.20, and review of the status of
62 compliance or noncompliance of sentenced offenders through a
63 treatment-based drug court program. While enrolled in a
64 treatment-based drug court program, the participant is subject
65 to a coordinated strategy developed by a drug court team under
66 subsection (4). The coordinated strategy may include a protocol
67 of sanctions that may be imposed upon the participant for
68 noncompliance with program rules. The protocol of sanctions may
69 include, but is not limited to, placement in a substance abuse
70 treatment program offered by a licensed service provider as
71 defined in s. 397.311 or in a jail-based treatment program or
72 serving a period of secure detention under chapter 985 if a
73 child or a period of incarceration within the time limits
74 established for contempt of court if an adult. The coordinated
75 strategy must be provided in writing to the participant before
76 the participant agrees to enter into a treatment-based drug
77 court program.

78 Section 2. Paragraph (m) of subsection (2) of section
79 921.0026, Florida Statutes, is amended to read:

80 921.0026 Mitigating circumstances.—This section applies to
81 any felony offense, except any capital felony, committed on or
82 after October 1, 1998.

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

86 (m) The defendant's offense is a nonviolent felony, the
87 defendant's Criminal Punishment Code scoresheet total sentence

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88 points under s. 921.0024 are 60 ~~52~~ points or fewer, and the
89 court determines that the defendant is amenable to the services
90 of a postadjudicatory treatment-based drug court program and is
91 otherwise qualified to participate in the program as part of the
92 sentence. For purposes of this paragraph, the term "nonviolent
93 felony" has the same meaning as provided in s. 948.08(6).

94 Section 3. Paragraph (a) of subsection (7) of section
95 948.01, Florida Statutes, is amended to read:

96 948.01 When court may place defendant on probation or into
97 community control.—

98 (7) (a) Notwithstanding s. 921.0024 and effective for
99 offenses committed on or after July 1, 2009, the sentencing
100 court may place the defendant into a postadjudicatory treatment-
101 based drug court program if the defendant's Criminal Punishment
102 Code scoresheet total sentence points under s. 921.0024 are 60
103 ~~52~~ points or fewer, and the offense defendant is a nonviolent
104 felony ~~offender~~, the defendant is amenable to substance abuse
105 treatment, and the defendant otherwise qualifies under s.
106 397.334(3). The satisfactory completion of the program shall be
107 a condition of the defendant's probation or community control.
108 As used in this subsection, the term "nonviolent felony" means a
109 third degree felony violation under chapter 810 or any other
110 felony offense that is not a forcible felony as defined in s.
111 776.08.

112 Section 4. Paragraph (i) of subsection (2) of section
113 948.06, Florida Statutes, is amended to read:

114 948.06 Violation of probation or community control;
115 revocation; modification; continuance; failure to pay
116 restitution or cost of supervision.—

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117 (2)

118 (i)1. Notwithstanding s. 921.0024 and effective for
119 offenses committed on or after July 1, 2009, the court may order
120 the defendant to successfully complete a postadjudicatory
121 treatment-based drug court program if:

122 a. The court finds or the offender admits that the offender
123 has violated his or her community control or probation ~~and the~~
124 ~~violation was due only to a failed or suspect substance abuse~~
125 ~~test;~~

126 b. The offender's Criminal Punishment Code scoresheet total
127 sentence points under s. 921.0024 are 60 ~~52~~ points or fewer
128 after including points for the violation;

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

133 d. The court determines that the offender is amenable to
134 the services of a postadjudicatory treatment-based drug court
135 program;

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

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

140 2. After the court orders the modification of community
141 control or probation, the original sentencing court shall
142 relinquish jurisdiction of the offender's case to the
143 postadjudicatory treatment-based drug court program until the
144 offender is no longer active in the program, the case is
145 returned to the sentencing court due to the offender's

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146 termination from the program for failure to comply with the
147 terms thereof, or the offender's sentence is completed.

148 Section 5. Section 948.20, Florida Statutes, is amended to
149 read:

150 948.20 Drug offender probation.—

151 (1) If it appears to the court upon a hearing that the
152 defendant is a chronic substance abuser whose criminal conduct
153 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent
154 felony if such nonviolent felony is committed on or after July
155 1, 2009, and notwithstanding s. 921.0024 the defendant's
156 Criminal Punishment Code scoresheet total sentence points are 60
157 ~~52~~ points or fewer, the court may either adjudge the defendant
158 guilty or stay and withhold the adjudication of guilt. In either
159 case, the court may also stay and withhold the imposition of
160 sentence and place the defendant on drug offender probation or
161 into a postadjudicatory treatment-based drug court program if
162 the defendant otherwise qualifies. As used in this section, the
163 term "nonviolent felony" means a third degree felony violation
164 under chapter 810 or any other felony offense that is not a
165 forcible felony as defined in s. 776.08.

166 (2)~~(1)~~ The Department of Corrections shall develop and
167 administer a drug offender probation program which emphasizes a
168 combination of treatment and intensive community supervision
169 approaches and which includes provision for supervision of
170 offenders in accordance with a specific treatment plan. The
171 program may include the use of graduated sanctions consistent
172 with the conditions imposed by the court. Drug offender
173 probation status shall include surveillance and random drug
174 testing, and may include those measures normally associated with

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175 community control, except that specific treatment conditions and
176 other treatment approaches necessary to monitor this population
177 may be ordered.

178 (3)~~(2)~~ Offenders placed on drug offender probation are
179 subject to revocation of probation as provided in s. 948.06.

180 Section 6. This act shall take effect July 1, 2011.