

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4035 Misdemeanor Pretrial Substance Abuse Programs

SPONSOR(S): Waldman and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 1 N	McAuliffe	Jones Darity
3) Judiciary Committee	12 Y, 4 N	Cunningham	Havlicak

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.

HB 4035 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.

This may have a positive fiscal impact on local governments because persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate.

This bill takes effect July 1, 2011.

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.,¹ 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,² 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.³

Participants in the program are subject to a coordinated strategy⁴ 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 or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.⁵

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

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.⁷ The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.⁸

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.

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

² Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and sets criteria for such programs.

³ 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. s. 948.16(10)(a), F.S.

⁴ 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. s. 948.16(1)(b), F.S.

⁵ Section 948.16(1)(b), F.S.

⁶ Section 948.16(2), F.S.

⁷ *Id.*

⁸ 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* Section 948.16(1)(b), F.S.

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, 2011.

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:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. There may be a positive fiscal impact on treatment providers if more people are eligible to participate in such programs.

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 and may not be sentenced to time in local jails. This may have a positive fiscal impact on local governments. However, counties may need to expend funds to expand their misdemeanor 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:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES