

By Senator Garcia

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1 A bill to be entitled

2 An act relating to pretrial intervention programs;  
3 amending s. 948.08, F.S.; revising criteria for  
4 eligibility for admission to a pretrial release  
5 program; requiring that a pretrial intervention  
6 program give admission preference to a defendant  
7 charged with a misdemeanor over a defendant charged  
8 with a felony; specifying requirements for a finding  
9 of indigence and amenability to treatment; requiring  
10 that certain defendants provide liens to secure costs  
11 of supervision; revising a cross-reference; amending  
12 ss. 397.334, 910.035, and 921.0026, F.S.; conforming  
13 cross-references; making technical and grammatical  
14 changes; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Subsection (2) of section 948.08, Florida  
19 Statutes, is amended, present subsections (3) through (7) are  
20 renumbered as subsections (4) through (8), respectively, a new  
21 subsection (3) is added to that section, and paragraph (c) of  
22 present subsection (6) of that section is amended, to read:

23 948.08 Pretrial intervention program.—

24 (2) (a) A defendant ~~Any first offender, or any person~~  
25 ~~previously convicted of not more than one nonviolent~~  
26 ~~misdemeanor, who is charged with any misdemeanor or felony of~~  
27 ~~the third degree~~ is eligible for release to the pretrial  
28 intervention program on the approval of the administrator of the  
29 program and the consent of the victim, the state attorney, and

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30 the judge who presided at the initial appearance hearing of the  
31 offender unless the defendant:

- 32 1. Has more than two prior felony arrests;
- 33 2. Has a prior felony conviction; or
- 34 3. Is charged with a felony of the second degree or higher.

35 (b) However, The defendant may not be released to the  
36 pretrial intervention program unless, after consultation with  
37 his or her attorney, he or she has voluntarily agreed to such  
38 program and has knowingly and intelligently waived his or her  
39 right to a speedy trial for the period of his or her diversion.  
40 The defendant or the defendant's immediate family may not  
41 personally contact the victim or the victim's immediate family  
42 to acquire the victim's consent under this section.

43 (c) A pretrial intervention program must give admission  
44 preference to a defendant charged with a misdemeanor over a  
45 defendant charged with a felony.

46 (3) (a) Before a defendant may be released to the pretrial  
47 release program, there must be:

48 1. A finding by the court and the program that the  
49 defendant is indigent after consideration of the defendant's  
50 assets, property, motor vehicle, other financial resources,  
51 employment, and any other necessary facts. The indigence of the  
52 defendant must be determined within 72 hours after the defendant  
53 completes submission of all financial information required by  
54 the court.

55 2. A finding by the court and the program that the  
56 defendant is amenable to treatment after consideration of the  
57 following:

- 58 a. The circumstances of the defendant's family, employment,

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59 character, mental condition, and length of residence in the  
60 community.

61 b. The defendant's record of convictions, appearances at  
62 the court proceedings, flight to avoid prosecution, or failure  
63 to appear at court proceedings.

64 c. Any other facts necessary to assist in the determination  
65 of whether the defendant should be released to the pretrial  
66 intervention program.

67 (b) If the defendant hires private counsel to represent  
68 himself or herself, the pretrial intervention program must place  
69 a lien on property of the defendant in order to secure payment  
70 of the costs of supervision under the program.

71 (7) ~~(6)~~

72 (c) At the end of the pretrial intervention period, the  
73 court shall consider the recommendation of the administrator  
74 pursuant to subsection (6) ~~(5)~~ and the recommendation of the  
75 state attorney as to disposition of the pending charges. The  
76 court shall determine, by written finding, whether the defendant  
77 has successfully completed the pretrial intervention program.  
78 Notwithstanding the coordinated strategy developed by a drug  
79 court team pursuant to s. 397.334(4), if the court finds that  
80 the defendant has not successfully completed the pretrial  
81 intervention program, the court may order the defendant ~~person~~  
82 to continue in education and treatment, which may include  
83 substance abuse treatment programs offered by licensed service  
84 providers as defined in s. 397.311 or jail-based treatment  
85 programs, or order that the charges revert to normal channels  
86 for prosecution. The court shall dismiss the charges upon a  
87 finding that the defendant has successfully completed the

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88 pretrial intervention program.

89 Section 2. Subsection (2) of section 397.334, Florida  
90 Statutes, is amended to read:

91 397.334 Treatment-based drug court programs.—

92 (2) Entry into any pretrial treatment-based drug court  
93 program is shall be voluntary. Except for a case as described in  
94 s. 948.08(7)(a)1. or 2. ~~When neither s. 948.08(6)(a)1. nor 2.~~  
95 ~~applies,~~ the court may order a defendant ~~an individual~~ to enter  
96 into a pretrial treatment-based drug court program only upon  
97 written agreement by the defendant ~~individual~~, which must ~~shall~~  
98 include a statement that the defendant ~~individual~~ understands  
99 the requirements of the program and the potential sanctions for  
100 noncompliance.

101 Section 3. Subsection (5) of section 910.035, Florida  
102 Statutes, is amended to read:

103 910.035 Transfer from county for plea and sentence.—

104 (5) Any person eligible for participation in a drug court  
105 treatment program pursuant to s. 948.08(7) ~~s. 948.08(6)~~ may be  
106 eligible to have the case transferred to a county other than  
107 that in which the charge arose if the drug court program agrees  
108 and if the following conditions are met:

109 (a) The authorized representative of the drug court program  
110 of the county requesting to transfer the case shall consult with  
111 the authorized representative of the drug court program in the  
112 county to which transfer is desired.

113 (b) If approval for transfer is received from all parties,  
114 the trial court shall accept a plea of nolo contendere and enter  
115 a transfer order directing the clerk to transfer the case to the  
116 county that ~~which~~ has accepted the defendant into its drug court

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117 program.

118 (c) The transfer order must ~~shall~~ include a copy of the  
119 probable cause affidavit; any charging documents in the case;  
120 all reports, witness statements, test results, evidence lists,  
121 and other documents in the case; the defendant's mailing address  
122 and phone number; and the defendant's written consent to abide  
123 by the rules and procedures of the receiving county's drug court  
124 program.

125 (d) After the transfer takes place, the clerk shall set the  
126 matter for a hearing before the drug court program judge, and  
127 the court shall ensure the defendant's entry into the drug court  
128 program.

129 (e) Upon successful completion of the drug court program,  
130 the jurisdiction to which the case has been transferred shall  
131 dispose of the case pursuant to s. 948.08(7) ~~s. 948.08(6)~~. If  
132 the defendant does not complete the drug court program  
133 successfully, the jurisdiction to which the case has been  
134 transferred shall dispose of the case within the guidelines of  
135 the Criminal Punishment Code.

136 Section 4. Paragraph (m) of subsection (2) of section  
137 921.0026, Florida Statutes, is amended to read:

138 921.0026 Mitigating circumstances.—This section applies to  
139 any felony offense, except any capital felony, committed on or  
140 after October 1, 1998.

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

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

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146 points under s. 921.0024 are 60 points or fewer, and the court  
147 determines that the defendant is amenable to the services of a  
148 postadjudicatory treatment-based drug court program and is  
149 otherwise qualified to participate in the program as part of the  
150 sentence. As used in ~~For purposes of~~ this paragraph, the term  
151 "nonviolent felony" has the same meaning as provided in s.  
152 948.08(7) ~~s. 948.08(6)~~.

153 Section 5. This act shall take effect July 1, 2012.