

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 186

INTRODUCER: Judiciary Committee and Senators Ring and Bogdanoff

SUBJECT: Misdemeanor Pretrial Substance Abuse Programs

DATE: October 19, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/1 amendment
2.	Maclure	Maclure	JU	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. It does so by making the following changes to current law:

- Removing the requirement that a person not have previously been admitted to a pretrial program in order to participate in a misdemeanor pretrial substance abuse education and treatment intervention program.
- Eliminating the current restriction that only a person charged with misdemeanor drug or paraphernalia possession under ch. 893, F.S., may participate in a program. The bill retains that offense as an eligible category for participation, but it also adds that a person may participate if he or she is charged with a misdemeanor for:
 - A nonviolent, nontraffic-related offense and it is shown that the person has a substance abuse problem;
 - Prostitution;
 - Underage possession of alcohol; or
 - Possession of certain controlled substances without a valid prescription.

This bill substantially amends section 948.16, Florida Statutes.

II. Present Situation:

Misdemeanor Pretrial Substance Abuse Education and Treatment Intervention

Misdemeanor possession of controlled substances under ch. 893, F.S., is the possession of 20 or fewer grams of cannabis.¹ Possession of drug paraphernalia for the purposes set forth in s. 893.147, F.S., is also a misdemeanor offense. The specified purposes include such things as possessing the paraphernalia in order to harvest or manufacture a controlled substance.²

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., 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, for a period based on the program requirements and the treatment plan for the offender.

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.³

Participants in the program are subject to a coordinated strategy 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.⁴

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.

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

¹ Section 893.13(6)(b), F.S. The offense is a misdemeanor of the first degree. *Id.*

² Section 893.147(1), F.S. The offense is a misdemeanor of the first degree. *Id.*

³ Section 948.16(1)(a), F.S.

⁴ Section 948.16(1)(b), F.S.

charges to the criminal docket for prosecution. The court shall dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.⁵

Felony Pretrial Intervention

The Department of Corrections operates a felony pretrial intervention program under s. 948.08, F.S. As a component of that statute, a person who is charged with a nonviolent felony and is identified as having a substance abuse problem or who is charged with a specified second- or third-degree felony, and who has not previously been convicted of a felony, is eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program, for a period of not less than one year.⁶ At the end of the pretrial intervention period, the court shall make a decision as to the disposition of the pending charges. The court shall determine, by written finding, whether the defendant has successfully completed the pretrial intervention program.⁷ In 2009, the Legislature eliminated from the statute a requirement that, in order to participate, the individual not have previously been admitted to a felony pretrial program under the statute.⁸

Pretrial Diversion Programs in General

Research indicates that pretrial diversion programs have proved to be effective alternatives to traditional case proceedings. A study conducted by the National Association of Pretrial Services Agencies⁹ found that, although data on recidivism rates for these programs was sparse, the available data indicated low rates (between 1 percent and 12 percent depending on the type of crime) of recidivism for offenders that complete pretrial diversion programs.¹⁰ The low rate of recidivism for offenders in these programs may be due to the nature of the programs. The Pretrial Justice Institute¹¹ states that pretrial diversion programs “operate under the theory that if the underlying problems are addressed the individual is less likely to recidivate. This, in turn, will lead to less crime and less future costs to the criminal justice system.”¹² Since their beginnings in the 1960’s, pretrial diversion programs have been continually expanded. In an article published by the National Association of Pretrial Services Agencies, the author states:

⁵ Section 948.16(2), F.S.

⁶ Section 948.08(6), F.S. The specified second- or third-degree felonies are: purchase or possession of a control substance, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud. In addition, the person must not have been charged with a crime involving violence. *Id.*

⁷ *Id.*

⁸ Chapter 2009-64, s. 5, Laws of Fla.

⁹ Incorporated in 1973 as a not-for-profit corporation, the National Association of Pretrial Services Agencies (NAPSA) is the national professional association for the pretrial release and pretrial diversion fields. More information can be found at <http://www.napsa.org/mission.htm> (last visited Oct. 13, 2011).

¹⁰ Spurgeon Kennedy et al. *Promising Practices in Pretrial Diversion*, 16, available at <http://www.pretrial.org/Docs/Documents/PromisingPracticeFinal.pdf> (last visited Oct. 13, 2011).

¹¹ In 1976 the U.S. Department of Justice funded the Pretrial Justice Institute at the request of NAPSA, and it is the nation’s only not-for-profit organization dedicated to ensuring informed pretrial decision-making for safe communities. More information can be found at <http://www.pretrial.org/AboutPJI/Pages/default.aspx> (last visited Oct. 13, 2011).

¹² John Clark, Pretrial Justice Institute, *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem-Solving Options at the Pretrial Stage*, 7 (October 2007), available at <http://www.pretrial.org/Reports/PJI%20Reports/Forms/DispForm.aspx?ID=25> (last visited Oct. 13, 2011).

In 1972, ... fund [from the Law Enforcement Assistance Administration of the U.S. Department of Justice] led to the start-up of the Metropolitan Dade County Pretrial Intervention Project, in Miami, FL. The consistent record of accomplishment of Dade County Pretrial Intervention from that time forward led not only to the proliferation of diversion programs in the State of Florida – far in excess of the number anywhere else in the south – but to the adoption of a state diversion statute and to state-level standards and goals for diversion promulgated by a governor’s crime commission.¹³

III. Effect of Proposed Changes:

Under current law only a person who has been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 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. It does so by removing the condition that, in order to participate in the substance abuse education and treatment intervention program, a person must not have been previously admitted to a pretrial program.

Additionally, the bill expands the pool of potential participants in the pretrial program to include persons who are charged with misdemeanor prostitution or underage possession of alcohol. Prostitution is defined by s. 796.07, F.S. The first violation is a second-degree misdemeanor, and a second offense is punishable as a first-degree misdemeanor.¹⁴ Possession of alcohol by a person under the age of 21 is prohibited by s. 562.111, F.S. The first offense is punishable as a second-degree misdemeanor while the second offense is a first-degree misdemeanor.¹⁵ The bill also provides that persons who are charged with misdemeanor possession of certain controlled substances without a valid prescription may be admitted to the program.¹⁶

Finally, the bill provides that a person charged with a nonviolent, nontraffic-related misdemeanor offense¹⁷ who is identified as having a substance abuse problem also is eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

¹³ John P. Bellassai, *A Short History of the Pretrial Diversion of Adult Defendants from Traditional Criminal Justice Processing Part One: The Early Years*, 5, available at <http://www.napsa.org/publications/diversionhistory.pdf> (last visited Oct. 13, 2011).

¹⁴ Section 796.07(4), F.S.

¹⁵ Section 562.111(1), F.S.

¹⁶ The bill cites s. 499.03, F.S., which punishes as a second-degree misdemeanor the possession of “any habit-forming, toxic, harmful, or new drug subject to s. 499.003(33), or prescription drug as defined in s. 499.003(43), unless the possession of the drug has been obtained by a valid prescription.” These drugs include “new drugs” (s. 499.003(33), F.S.), prescription drugs (s. 499.003(43), F.S.), medicinal drugs (s. 465.003(8), F.S.), misbranded drugs (s. 499.007(13), F.S.), compressed medical gas (s. 499.003(11), F.S.), prescription medical oxygen (s. 499.003(46), F.S.), and veterinary prescription drugs (s. 499.003(53), F.S.).

¹⁷ These offenses would include certain trespass, theft, criminal-mischief, and worthless-check offenses to name a few.

The bill retains the requirement that a person eligible to participate in a misdemeanor pretrial substance abuse education and treatment intervention program must not have previously been convicted of a felony.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it involves a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The number of potential participants in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs could increase under the bill. Although no potential fiscal impact has been brought to the attention of professional staff of the committee, it is conceivable that the counties may decide to increase program capacity, which would result in increased expenditures. To the extent that persons who successfully complete programs have their criminal charges dismissed and are not sentenced to time in local jails, local governments may see positive fiscal effects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on October 18, 2011:

The committee substitute:

- Clarifies that eligibility to participate in a misdemeanor pretrial substance abuse education and treatment intervention program applies to a person who may be charged with one of several different types of misdemeanor offenses prescribed in the bill and clarifies that the prohibition against having a prior felony conviction applies in the case of each prescribed offense.
- Corrects the statutory citation (to s. 499.03, F.S.) for possession of a controlled substance without a valid prescription; and
- Adds the statutory citation for possession of alcohol while under 21 years of age (s. 562.111, F.S.) for continuity with the other specific offenses addressed in the bill, which include statutory citations.

- B. **Amendments:**

None.