

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 Criminal Justice Committee

BILL: SB 186

INTRODUCER: Senator Ring

SUBJECT: Misdemeanor Pretrial Substance Abuse Programs

DATE: September 20, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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 by making three changes to current law. The bill:

- Removes the requirement that a person not have previously been admitted to a pretrial program in order to participate in such programs.
- Eliminates the current restriction that program participants may only be charged with misdemeanor drug or paraphernalia possession under ch. 893, F.S. It specifies that persons who are charged with a nonviolent, nontraffic-related misdemeanor are eligible to participate if it is shown that the person has a substance abuse problem.
- Includes persons who are charged with prostitution, underage possession of alcohol or possession of certain controlled substances without a valid prescription, as persons who may be eligible for program admission.

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 less than 20 grams of cannabis.¹ Possession of drug paraphernalia for the purposes set forth in s. 893.147, F.S. is also a misdemeanor offense.

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.

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.

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 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.

Research indicates that pretrial diversion programs, such as the misdemeanor pretrial substance abuse education and treatment intervention program, have proven themselves to be effective alternatives to traditional case proceedings. A 2007 study conducted by the National Association

¹ s. 893.13(6)(b), F.S.

of Pretrial Services Agencies² 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 pre-trial diversion programs.³ The low rate of recidivism for offenders in these programs may be due to the nature of the programs. The Pretrial Justice Institute⁴ 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.”⁵ 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:

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.⁶

III. Effect of Proposed Changes:

Under current law 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. 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 programs to include persons who are charged with prostitution, underage possession of alcohol or possession of certain controlled substances without a valid prescription.

² 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>.

³ Kennedy, Spurgeon et al. *Promising Practices in Pretrial Diversion*, 16 (2007), <http://www.pretrial.org/Docs/Documents/PromisingPracticeFinal.pdf>.

⁴ 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 non-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>.

⁵ Clark, John. 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), <http://www.pretrial.org/Docs/Documents/Role%20of%20Traditional%20Pretrial%20Diversion%20in%20the%20Age%20of%20Specialty%20Treatment%20Courts.pdf>.

⁶ Bellassai, John P. *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>.

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.

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.

The bill provides that persons who possess certain controlled substances without a valid prescription may be admitted to the program.⁷

The bill also provides that persons charged with a nonviolent, nontraffic-related misdemeanor offense⁸ who are identified as having a substance abuse problem are also eligible for admission into the misdemeanor pretrial substance abuse education and treatment intervention programs.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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.

⁷ The bill cites s. 499.03(2) and (3), 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.).

⁸ These offenses would include certain trespass, theft, criminal mischief, and worthless check offenses to name a few.

C. Government Sector Impact:

The bill as written could expand the number of potential participants in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs. 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.

VI. Technical Deficiencies:

For the sake of continuity it is suggested that s. 562.111, F.S. (underage possession of alcohol) be referenced on line 24 of the bill.

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.)

None.

B. Amendments:

None.