

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: CS/SB 498  
INTRODUCER: Criminal Justice and Senator Lynn  
SUBJECT: Substance Abuse Education and Intervention Programs  
DATE: January 18, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill gives county criminal courts the option of sentencing a defendant found guilty of misdemeanor possession of a controlled substance or drug paraphernalia to a licensed substance abuse education and treatment intervention program as a condition of probation.

The bill also expressly authorizes a licensed substance abuse education and treatment program to provide probation services to those misdemeanor drug offenders who are assigned to the program.

This bill substantially amends section 948.15 of the Florida Statutes.

**II. Present Situation:**

*Florida's Drug Control Strategy*, published in 2009, highlights the approach of treating the probation population for substance abuse.<sup>1</sup> Considering research indicating that “over half of all cocaine and heroin is purchased by individuals ... on pretrial release, probation, or parole,”<sup>2</sup> the report suggests that “a commitment to treatment” of those individuals formally under the control of the criminal justice system may “dramatically reduce the size and profitability of illicit markets by addressing the heaviest consumers.”<sup>3</sup> In this way, investments in drug treatments for

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<sup>1</sup>Executive Office of the Governor Office of Drug Control, *Florida's Drug Control Strategy* (2009), <http://drugcontrol.flgov.com/pdfs/DRUGCONTROLSTRATEGY.pdf> (last visited Jan. 10, 2012).

<sup>2</sup> *Id.* at 7 (quoting National Research Council. (2001). *Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us*. Manski, C. F., Pepper, J. V., & Petrie, C. V. (Eds.). Washington, DC: National Academy Press, p. 43.).

<sup>3</sup> *Florida's Drug Control Strategy* (2009), at 7.

the probation population are thought to be able to shrink both the supply and demand in drug markets.<sup>4</sup>

Courts rely on existing treatment-based drug court programs, codified in statute, to place misdemeanor drug offenders in substance abuse programs offered by licensed service providers who deliver various licensed service components, including treatment and intervention. In this context, the licensed service provider must qualify for licensure as a service provider under chapter 397, relating to substance abuse services, and abide by the requirements for misdemeanor probation services providers in s. 948.15, F.S.

### **Substance Abuse Programs and Services**

“Substance abuse” is defined as the misuse or abuse of, or dependence on alcohol, illicit drugs, or prescription medications.<sup>5</sup> Individuals can become “substance abuse impaired” through the use of these substances “in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.”<sup>6</sup> The Legislature has expressed that an individual progressing along a continuum of misuse, abuse, and dependence has an increased need for substance abuse intervention and treatment to help abate the problem.<sup>7</sup> Towards this end, “substance abuse programs and services” (also known as “drug control”) have been established, and may include various efforts to limit substance abuse such as prevention, intervention, clinical treatment, recovery support initiatives, and efforts by law enforcement agencies.<sup>8</sup>

A licensed service provider as defined in s. 397.311(17), F.S., is “a public agency under this chapter [ch. 397], a private for-profit or not-for-profit agency . . . , a physician or any other private practitioner . . . , or a hospital that offers substance abuse services through one or more licensed service components.” Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services.<sup>9</sup> The term “intervention” means structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.<sup>10</sup>

The Substance Abuse Program Office of the Department of Children and Family Services (DCF) licenses and regulates programs of all substance abuse providers in the state.<sup>11</sup> Licensure and other standards for substance abuse services can be found in Chapter 65-D30, F.A.C., including standards for detoxification, aftercare, intervention, prevention, and medication.

From the 2005-2006 fiscal year through the 2010-2011 fiscal year, the number of adults served by “adult substance abuse prevention, evaluation and treatment services” in Florida grew from

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<sup>4</sup> *Id.*

<sup>5</sup> Section 397.311(36), F.S.

<sup>6</sup> Section 397.311(14), F.S.

<sup>7</sup> Section 397.311(36), F.S.

<sup>8</sup> Section 397.331(1)(b), F.S.

<sup>9</sup> Section 397.311(18), F.S.

<sup>10</sup> Section 397.311(18)(b), F.S.

<sup>11</sup> Authorized by s. 397.321(6), F.S.

102,345 individuals per year to 111,564 individuals per year.<sup>12</sup> During these six years an average of 72 percent of the adults served had successfully completed substance abuse treatment services with no alcohol and other drug use during the month preceding discharge. For the 2009-2010 fiscal year, the DCF began recording another measurement which allows for evaluation of the extent to which treatment facilitates reduced subsequent criminal activity. Specifically, DCF measured the “percent change in the number of adults arrested 30 days prior to admission versus 30 days prior to discharge.”<sup>13</sup> The findings seem to indicate a decrease in the arrest rate by 35 percent in the 2009-2010 fiscal year, and by 11 percent in the 2010-2011 fiscal year.<sup>14</sup>

### **Treatment-based Drug Court Programs as a Term of Misdemeanor Probation**

Any state court having original jurisdiction of criminal actions may hear and determine the question of the probation of a defendant in a criminal case, with or without adjudicating the guilt of the defendant.<sup>15</sup> The court may do so at a time to be determined by the court. Courts determine the terms and conditions of probation. Section 948.03, F.S., lists standard conditions of probation, such as submitting to random drug testing, yet “the enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto ... as proper.”<sup>16</sup>

### **Treatment-based Drug Court Programs**

Treatment-based drug court programs offer a coordinated approach to addressing the more than 60 percent of all cases entering the criminal justice system which have a substance abuse nexus.<sup>17</sup> Because these programs have the most sustained success in reducing substance abuse, they have been described as the “crown jewel” in drug treatment.<sup>18</sup> An individual enrolled in a treatment-based drug court program is “subject to a coordinated strategy developed by a drug court team,” which may include “a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules.”<sup>19</sup> The protocol of sanctions may include placement in a substance abuse treatment program offered by a licensed service provider.<sup>20</sup>

Even before an information has been filed or an indictment has been returned in the circuit court, persons charged with a crime may be eligible for release to certain treatment-based drug court programs.<sup>21</sup> These programs include the pretrial intervention program provided in s. 948.08, F.S., the misdemeanor pretrial substance abuse education and treatment intervention program

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<sup>12</sup> Florida Department of Children and Families, Data on Adult Substance Abuse Prevention, Evaluation and Treatment Services, Performance Dashboard Application, <http://dcfdashboard.dcf.state.fl.us/> (last visited Jan. 12, 2012).

<sup>13</sup> E-mail from Sen-Yoni Musingo, Ph.D., Florida Department of Children and Families, to Stephanie Colston, Florida Department of Children and Family Services (Jan. 11, 2012) (on file with the Senate Committee on Judiciary).

<sup>14</sup> *Id.*

<sup>15</sup> Section 948.01, F.S.

<sup>16</sup> Section 948.03(2), F.S.

<sup>17</sup> Bruce D. Grant, Florida Office of Drug Control, *2010 Transition Report* (Nov. 10, 2010), at 7, [http://drugcontrol.flgov.com/pdfs/Transition\\_Report-Nov%205.pdf](http://drugcontrol.flgov.com/pdfs/Transition_Report-Nov%205.pdf) (last visited Jan. 12, 2012).

<sup>18</sup> *Id.*

<sup>19</sup> Section 397.334(5), F.S. (Note, “[t]he coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.”).

<sup>20</sup> *Id.*

<sup>21</sup> Section 948.08, F.S. *See also* s. 397.334(5), F.S.

provided in s. 948.16, F.S., and the juvenile delinquency pretrial intervention program provided in s. 985.345, F.S.

Postadjudicatory programs are provided under ss. 948.01(7)(a), 948.06, and 948.20, F.S. The sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if:<sup>22</sup>

- the defendant's Criminal Punishment Code scoresheet total sentence points are 60 points or fewer;<sup>23</sup>
- the offense is a nonviolent felony;
- the defendant is amenable to substance abuse treatment; and
- the defendant otherwise qualifies under s. 397.334(3), F.S.

The satisfactory completion of a postadjudicatory program is "a condition of the defendant's probation or community control."<sup>24</sup>

### **Misdemeanor Probation Services**

Section 948.15, F.S., provides for misdemeanor probation services. Even though "[a] private entity may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court,"<sup>25</sup> s. 948.15, F.S., is written such that it would apply to private entities. It specifies that a private entity or public entity under the supervision of the board of county commissioners or the court may provide probation services for offenders sentenced by the county court.<sup>26</sup> Any private entity providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered.<sup>27</sup>

A private entity that provides court-ordered services to offenders and that charges a fee for such services must register with the board of county commissioners in the county in which the services are offered.<sup>28</sup> The entity is required to provide the following information for each program it operates:

- The length of time the program has been operating in the county.
- A list of the staff and a summary of their qualifications.
- A summary of the types of services that are offered under the program.
- The fees the entity charges for court-ordered services and its procedures, if any, for handling indigent offenders.<sup>29</sup>

The term of probation for a first-degree misdemeanor offense may be for up to one year.<sup>30</sup>

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<sup>22</sup> Section 948.01(7)(a), F.S.

<sup>23</sup> As calculated under s. 921.0024, F.S.

<sup>24</sup> Section 948.01(7)(a), F.S.

<sup>25</sup> Section 948.01(1)(a), F.S.

<sup>26</sup> Section 948.15(3), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 948.15(4), F.S.

<sup>29</sup> *Id.*

**III. Effect of Proposed Changes:**

The bill provides that defendants found guilty of a misdemeanor drug or paraphernalia possession charge under chapter 893, F.S., may be placed by the county criminal court into a “licensed substance abuse education and treatment intervention program” as a condition of probation. The provisions in the bill apply to misdemeanor crimes, not felony crimes.

The bill also provides that a licensed substance abuse education and treatment intervention program may provide any other probation services, beyond the programmatic component, for this particular pool of offenders.

The bill does not appear to limit a county’s options with regard to contract for county court probation supervision services as it is currently set forth in s. 948.15, F.S.

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:****C. Government Sector Impact:**

County governments may be affected to the extent that the county chooses to enter into a contract for services with a licensed substance abuse education and intervention program that costs more (or less) than any current contractual obligations for probation services.

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<sup>30</sup> Section 948.15(1), F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Legislature may wish to clarify the bill by replacing references to a “licensed substance abuse education and treatment intervention program” with a “substance abuse education and intervention program, licensed under chapter 397.”

**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 Criminal Justice on December 7, 2011:**

Amendment 192440 deleted Section 1 from the original bill. This eliminated the bill’s amendment of s. 948.03, F.S., which is the felony probation statute. The amendment clarifies that the bill does not apply in felony cases and eliminates potential practitioner confusion.

- B. **Amendments:**

None.