

HB 875

2012

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 pretrial release
 5 programs; specifying requirements for a finding of
 6 indigence and amenability to treatment; requiring
 7 certain defendants to provide liens to secure costs of
 8 supervision; revising a cross-reference; amending ss.
 9 397.334, 910.035, and 921.0026, F.S.; conforming
 10 cross-references; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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

19 948.08 Pretrial intervention program.—

20 (2) (a) ~~An Any first offender, or any person previously~~
 21 ~~convicted of not more than one nonviolent misdemeanor, who is~~
 22 ~~charged with any misdemeanor or felony of the third degree is~~
 23 eligible for release to the pretrial intervention program on the
 24 approval of the administrator of the program and the consent of
 25 the victim, the state attorney, and the judge who presided at
 26 the initial appearance hearing of the offender unless the
 27 offender:

28 1. Has more than two prior felony arrests;

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2. Has a prior felony conviction; or
3. Is charged with a felony of the second degree or
higher.

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

(c) A pretrial intervention program must give admission preference to individuals charged with misdemeanors over those charged with felonies.

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

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

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

a. The circumstances of the defendant's family, employment, character, mental condition, and length of residence in the community.

57 b. The defendant's record of convictions, appearances at
58 the court proceedings, flight to avoid prosecution, or failure
59 to appear at court proceedings.

60 c. Any other facts necessary to assist in the
61 determination of whether the accused should be released under
62 the supervision of the program.

63 (b) If an individual hires private counsel to represent
64 himself or herself, the pretrial program must place a lien on
65 property of the defendant to secure payment of the costs of
66 supervision under the program.

67 (7) ~~(6)~~

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

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

87 397.334 Treatment-based drug court programs.—

88 (2) Entry into any pretrial treatment-based drug court
 89 program shall be voluntary. When neither s. 948.08(7)(a)1. nor
 90 s. 948.08(7)(a)2. ~~948.08(6)(a)1. nor 2.~~ applies, the court may
 91 order an individual to enter into a pretrial treatment-based
 92 drug court program only upon written agreement by the
 93 individual, which shall include a statement that the individual
 94 understands the requirements of the program and the potential
 95 sanctions for noncompliance.

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

98 910.035 Transfer from county for plea and sentence.—

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

104 (a) The authorized representative of the drug court
 105 program of the county requesting to transfer the case shall
 106 consult with the authorized representative of the drug court
 107 program in the county to which transfer is desired.

108 (b) If approval for transfer is received from all parties,
 109 the trial court shall accept a plea of nolo contendere and enter
 110 a transfer order directing the clerk to transfer the case to the
 111 county which has accepted the defendant into its drug court
 112 program.

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

120 (d) After the transfer takes place, the clerk shall set
 121 the matter for a hearing before the drug court program judge and
 122 the court shall ensure the defendant's entry into the drug court
 123 program.

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

131 Section 4. Paragraph (m) of subsection (2) of section
 132 921.0026, Florida Statutes, is amended to read:

133 921.0026 Mitigating circumstances.—This section applies to
 134 any felony offense, except any capital felony, committed on or
 135 after October 1, 1998.

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

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

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

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