

By Senator Braynon

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1 A bill to be entitled
2 An act relating to drug-dependent offenders; creating
3 s. 948.205, F.S.; requiring the court to order an
4 offender to submit to a professional diagnostic
5 assessment under specified circumstances; providing
6 circumstances in which the court may choose not to
7 order a diagnostic assessment; specifying criteria to
8 be used in determining whether an offender is drug
9 dependent; requiring the court to place on the written
10 record its reasons for not ordering a professional
11 diagnostic assessment; clarifying the court's
12 authority to order drug testing or screening; defining
13 terms; requiring the court to sentence an offender to
14 special probation if the court finds that an offender
15 is drug dependent and in need of treatment; requiring
16 certain offenders to participate in a court-supervised
17 drug treatment program; providing circumstances in
18 which the court need not order the offender to
19 participate in drug treatment; providing for the
20 ineligibility of some offenders to be sentenced to
21 special probation; requiring the court to consider all
22 relevant circumstances in determining whether to
23 sentence an offender to special probation and to place
24 the reasons for its decision on the record; providing
25 that an order sentencing an offender to special
26 probation is not final until the state attorney has an
27 opportunity to appeal the sentence; defining the term
28 "person in need of treatment"; requiring a court to
29 order a drug-dependent person who is ineligible for

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30 regular probation to be sentenced to a term of
31 special-probation drug treatment; providing that an
32 offender may be sentenced to special probation for up
33 to 5 years; requiring the court to find certain facts
34 before ordering special-probation drug treatment;
35 requiring the court to consider certain factors in
36 determining whether residential or nonresidential
37 treatment is appropriate; providing the conditions for
38 special probation imposed on the offender for
39 participating in special probation; providing criteria
40 that make an offender ineligible for special-probation
41 drug treatment programs; requiring an offender who is
42 placed on special probation to be immediately
43 transferred to the custody of a residential treatment
44 facility licensed and approved by the Department of
45 Children and Families and the Department of Health;
46 providing that an offender be transferred to a prison
47 for not more than 6 months if there is no vacancy at a
48 residential treatment facility at the time of
49 sentencing; providing that an offender complete his or
50 her special probation in a nonresidential program
51 after completing the residential placement; requiring
52 the probation department or other appropriate agency
53 designated by the court to monitor or supervise the
54 offender's special probation; requiring that the
55 agencies report periodically to the court as to the
56 offender's progress in treatment and compliance with
57 court-imposed terms and conditions; requiring the
58 special-probation treatment provider to promptly

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59 report to the probation department or other
60 appropriate agency all significant failures by the
61 offender to comply with a court-imposed term or
62 condition of special-probation drug treatment,
63 including a positive drug or alcohol test or the
64 unexcused failure to attend a required program event;
65 providing penalties for an offender violating any term
66 or condition of special probation; providing an
67 exception; providing criteria for the court to
68 consider in determining whether to revoke special
69 probation; providing alternative sentences if the
70 offender's special probation is revoked; providing for
71 additional terms and conditions with which the
72 offender must comply if the court orders continued
73 special probation; providing penalties for an offender
74 refusing to submit to a drug test; specifying that
75 certain persons may institute proceedings if they
76 believes the offender has violated the terms or
77 conditions of special probation; authorizing the court
78 to temporarily incarcerate an offender under certain
79 circumstances in order to motivate the offender to
80 make satisfactory progress in the treatment program;
81 requiring a participating offender to pay, to the
82 extent determined possible, the cost of special-
83 probation drug treatment, as well as any fines, fees,
84 penalties, or restitution applicable to the original
85 offense; authorizing the court to temporarily suspend
86 imposition of all or any portion of the term of
87 treatment in a residential treatment facility to allow

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88 the offender to enter a nonresidential treatment
89 program; providing criteria that may justify the
90 transfer to a nonresidential treatment program;
91 providing that a state attorney may object to a
92 proposed transfer; providing that the court may
93 permanently suspend the transfer of an offender to
94 residential treatment if there has been satisfactory
95 progress in treatment; requiring the court to order at
96 least weekly drug and alcohol tests, appropriate
97 curfews, and restrictions on movement if residential
98 treatment is temporarily suspended; requiring
99 notification to the court and state attorney under
100 certain circumstances; providing for the revocation of
101 special probation in certain circumstances;
102 authorizing early discharge from special probation
103 under specified circumstances; providing an effective
104 date.

105
106 Be It Enacted by the Legislature of the State of Florida:

107
108 Section 1. Section 948.205, Florida Statutes, is created to
109 read:

110 948.205 Special probation for drug-dependent offenders.-

111 (1) DIAGNOSTIC ASSESSMENT.-The court shall order that each
112 offender submit to a professional diagnostic assessment if:

113 (a) There is a reasonable basis for the court to believe
114 that an offender may be drug dependent;

115 (b) The offender meets the eligibility criteria for
116 consideration for ordering the offender to a special-probation

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117 drug treatment program; and

118 (c) The offender is charged with:

119 1. A crime that is subject to imprisonment; or

120 2. A felony of the third degree if the offender has
121 previously been convicted of a crime subject to imprisonment or
122 which resulted in the imposition of a state prison term.

123 (d) The court is not required to order a diagnostic
124 assessment if the court is clearly convinced that such an
125 assessment will not serve any useful purpose. If the court does
126 not order a professional diagnostic assessment, the court shall
127 place on the written record the reasons for its decision not to
128 order the assessment.

129 (e) This section does not limit a court's authority to
130 order drug testing or drug screening at any time.

131 (2) DETERMINATION OF DRUG DEPENDENCY.—For the purposes of
132 this section, the following factual circumstances establish a
133 reasonable basis for the court to believe that an offender may
134 be drug dependent:

135 (a) The present offense involves the use or possession of a
136 controlled substance;

137 (b) The offender has previously been convicted of an
138 offense involving the use or possession of a controlled
139 substance, was admitted to pretrial intervention or supervisory
140 treatment, or received a conditional discharge for a charge
141 involving a controlled substance;

142 (c) The offender has a pending charge in this or any other
143 state court or a federal court involving the use or possession
144 of a controlled substance;

145 (d) The offender has at any time in the past received any

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146 form of drug treatment or counseling;

147 (e) The offender appears to have been under the influence
148 of a controlled substance during the commission of the present
149 offense;

150 (f) It reasonably appears that the offender's present
151 offense may have been committed to acquire property or moneys to
152 purchase a controlled substance for the offender's personal use;

153 (g) The offender admits to the unlawful use or possession
154 of a controlled substance within the 12 months preceding the
155 arrest for the present offense;

156 (h) The offender had a positive drug test within the past
157 12 months; or

158 (i) There is information, other than the circumstances
159 enumerated in paragraphs (a) through (h), which indicates that
160 the offender may be a drug-dependent offender or would otherwise
161 benefit by undergoing a professional diagnostic assessment.

162
163 A person who has completed his or her professional diagnostic
164 assessment and has been found to be drug dependent shall be
165 returned to the court to be ordered into special probation
166 pursuant to subsection (3).

167 (3) SENTENCE OF SPECIAL PROBATION FOR CERTAIN OFFENDERS.—

168 (a) For the purposes of this section, the term "offender in
169 need of treatment" means an offender who:

170 1. The court has determined to be drug-dependent; and

171 2. Has been convicted of:

172 a. A crime subject to a presumption of imprisonment; or

173 b. A felony of the third degree, if the offender has
174 previously been convicted of a crime subject to a presumption of

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175 imprisonment or a crime that resulted in the imposition of a
176 state prison term.

177 (b) If an assessment finds that an offender is a drug-
178 dependent offender in need of treatment, the court shall
179 sentence the offender to special probation to participate in a
180 court-supervised drug treatment program, regardless of whether
181 the offender has sought or consents to such drug treatment as a
182 condition of a probation sentence.

183 (c) The court shall order the offender to participate in
184 special-probation drug treatment unless:

185 1. The court finds that a sentence of imprisonment must be
186 imposed, in which case a sentence of imprisonment shall be
187 served first; or

188 2. The court is clearly convinced that:

189 a. The treatment, monitoring, and supervision services for
190 drug-dependent offenders which are provided in prison are
191 clinically adequate to address the offender's drug dependency;

192 b. The offender's drug treatment needs would not be better
193 addressed by sentencing the offender to special probation;

194 c. Placing the offender on regular probation would pose a
195 danger to the community; and

196 d. A sentence of regular probation would not be consistent
197 with law.

198 (d) An offender is not eligible to be ordered to special
199 probation if the offender is convicted of or adjudicated
200 delinquent for:

201 1. A felony of the first degree;

202 2. A felony of the second or third degree involving sex
203 crimes;

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204 3. A felony for which a mandatory minimum period of
205 incarceration is prescribed under law; or

206 4. An offense that involved the distribution or the
207 conspiracy or attempt to distribute a controlled substance or
208 controlled substance analog to a juvenile near or on school
209 property.

210 (e) In making the findings and determinations required
211 under this section, the court shall consider all relevant
212 circumstances; shall take judicial notice of any evidence,
213 testimony, or information adduced at the trial, plea hearing, or
214 other court proceedings; and shall consider the presentence
215 report and the results of any professional diagnostic
216 assessment. The court shall place on the written record the
217 reasons for its decision.

218 (f) If the court imposes a sentence of special probation,
219 the sentence becomes final only after the state attorney has had
220 10 days to appeal the sentence to the appropriate appellate
221 court.

222 (4) REHABILITATION PROGRAM FOR DRUG-DEPENDENT OFFENDERS;
223 RESIDENTIAL PLACEMENTS.—

224 (a) A drug-dependent offender who is eligible for special-
225 probation drug treatment shall be sentenced to such probation.
226 The court shall give priority to an offender who has requested
227 special probation over an offender who is being considered by
228 the court, on its own motion, for special probation. This
229 paragraph does not prohibit an offender who is eligible for
230 probation from requesting drug treatment as a condition of
231 probation.

232 (b) The court shall place the offender on special probation

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233 for a period of not less than 5 years.

234 (c) Unless the offender is sentenced to nonresidential
235 treatment under subsection (6), the offender shall initially be
236 placed in a suitable residential treatment facility that has
237 agreed to provide appropriate drug treatment services in
238 accordance with the requirements of this section. Such
239 residential facilities must be licensed and approved by the
240 Department of Children and Families and the Department of
241 Health.

242 (d) In determining whether to sentence the offender to a
243 residential-based or nonresidential special-probation drug
244 treatment program, the court shall consider all relevant
245 circumstances, and shall take judicial notice of the evidence,
246 testimony, or information adduced at the trial, plea hearing, or
247 other court proceedings. The court shall also consider the
248 presentence report and the results of the professional
249 diagnostic assessment to determine to what extent the offender
250 is drug dependent and would benefit from residential or
251 nonresidential treatment.

252 (5) CONDITIONS OF SPECIAL PROBATION IN A RESIDENTIAL
253 FACILITY.—As a condition of placing an offender in a residential
254 special-probation drug treatment program, the offender shall:

255 (a) Agree to reside only at a residential drug treatment
256 program facility that is licensed and approved by the Department
257 of Children and Families and the Department of Health;

258 (b) Agree to comply with all treatment program rules and
259 the requirements during the course of treatment;

260 (c) Cooperate fully with the treatment provider and the
261 provider's staff; and

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262 (d) Comply with such other reasonable terms and conditions
263 as may be required by the court or the department. Among the
264 reasonable terms is the requirement that each offender submit to
265 random, periodic urine testing for drugs throughout the period
266 of special probation.

267
268 Upon order of the court, the department shall immediately
269 transfer the offender to the drug treatment facility. If the
270 residential treatment facility cannot immediately accommodate
271 the offender, the offender shall be temporarily incarcerated in
272 a state prison to await a vacancy in the residential treatment
273 facility. The term of such penal commitment may not exceed 6
274 months.

275 (6) NONRESIDENTIAL TREATMENT PROGRAMS.—

276 (a) An offender may enter a nonresidential drug treatment
277 program upon successful completion of the required residential
278 treatment or, directly, in place of a residential program, if
279 the court finds on the written record that:

280 1. The professional conducting the diagnostic assessment
281 has recommended in writing that the proposed course of
282 nonresidential drug treatment services is clinically appropriate
283 and adequate to address the offender's drug treatment needs.

284 2. No danger to the community would result from the
285 offender participating in the proposed course of nonresidential
286 treatment services.

287 3. A suitable treatment provider is available, and has
288 agreed, to provide clinically appropriate nonresidential drug
289 treatment services.

290 (b) If, after a period of 6 months of nonresidential drug

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291 treatment, the court finds that the offender has made
292 satisfactory progress and that there is a substantial likelihood
293 that the offender will successfully complete the nonresidential
294 treatment program, the court shall give notice to the state
295 attorney that the court may permanently suspend any further
296 commitment of the offender to a residential drug treatment
297 program and, instead, order the offender to a nonresidential
298 drug treatment program. If the state attorney objects to the
299 court's decision to suspend the commitment of the offender to a
300 residential treatment facility, the sentence of special
301 probation does not become final until the state attorney has the
302 opportunity to appeal the court's decision.

303 (c) This subsection does not limit the authority of the
304 court at any other time during the term of special-probation
305 drug treatment to order the offender to be committed to a
306 residential or nonresidential treatment facility if the court
307 determines that such treatment is clinically appropriate and
308 necessary to address the offender's present treatment needs.

309 (d) If the court finds that an offender has made exemplary
310 progress in the course of treatment, the court may, upon
311 recommendation of the offender's supervising probation officer
312 or on the court's own motion, give notice to the state attorney
313 that the court may grant early discharge from a term of special
314 probation provided that the offender:

- 315 1. Has satisfactorily completed the treatment program
316 ordered by the court;
317 2. Has served at least 2 years of special probation;
318 3. Did not commit a substantial violation of any term or
319 condition of special probation, including, but not limited to, a

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320 positive urine test, within the preceding 12 months; and

321 4. Is not likely to relapse or commit an offense if
322 probation supervision and related services are discontinued.

323 (7) COMPLIANCE WITH CONDITIONS; PENALTIES.-

324 (a) The probation department or other appropriate agency
325 designated by the court to monitor and supervise the offender's
326 special-probation drug treatment shall report periodically to
327 the court as to the offender's progress in treatment and
328 compliance with court-imposed terms and conditions. The special
329 probation treatment provider shall promptly report to the
330 probation department any failure by the offender to comply with
331 court-imposed terms or conditions of special probation,
332 including a positive drug test or the unexcused failure by the
333 offender to attend any session or activity required by the
334 department or drug treatment provider. The probation department
335 shall immediately notify the court and the state attorney of the
336 offender's noncompliance.

337 (b)1. For a first violation of any term or condition of
338 special-probation drug treatment or of any requirements of the
339 course of treatment, the court, in its discretion, may
340 permanently revoke the offender's special probation.

341 2. For a second violation of any term or condition of
342 special probation or of any requirements of the course of
343 treatment, the court may permanently revoke the offender's
344 special probation.

345 (c) If the court finds that there is a substantial
346 likelihood that the offender will successfully complete the drug
347 treatment program if allowed to continue on special-probation
348 treatment and is clearly convinced that no danger to the

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349 community will result from allowing the offender to continue,
350 the court may order the offender to remain on special probation
351 for treatment services. The court's determination to allow the
352 offender to continue on special probation following a second
353 violation may be appealed by the state attorney.

354 (d) In making its determination whether to revoke special-
355 probation drug treatment services, the court shall consider the
356 nature and seriousness of the present infraction and any past
357 infractions in relation to the offender's overall progress in
358 the course of nonresidential treatment. The court shall give
359 added weight to the treatment provider's recommendation as to
360 whether the offender's special probation should be permanently
361 revoked or continued.

362 (e)1. If the court permanently revokes the offender's
363 special probation, the court shall impose the sentence that
364 might have been imposed or that was required to be imposed.

365 2. If the court orders, or is required to impose, a term of
366 imprisonment, the offender shall receive credit for any time
367 served in custody or while awaiting placement in a treatment
368 facility, and for each day during which the offender
369 satisfactorily complied with the terms and conditions of special
370 probation while committed to a residential treatment facility or
371 while receiving nonresidential treatment. The court, in
372 determining credit for time spent in a residential treatment
373 facility, shall consider the recommendations of the treatment
374 provider.

375 (f) If the court allows the offender to continue on special
376 probation, the court shall order the offender to comply with
377 such additional terms and conditions necessary to deter and

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378 promptly detect any further violation, including, but not
379 limited to, more frequent drug testing.

380 (g) A legal proceeding to allege a violation of the terms
381 or conditions of special probation may be initiated by a
382 probation officer or the state attorney or on the court's own
383 motion. An offender who fails to comply with the terms of his or
384 her special-probation program and who is thereafter sentenced to
385 imprisonment in accordance with this section is ineligible for
386 another entry into an intensive supervision program.

387 (h)1. If an offender on special probation commits a second
388 or subsequent violation of this section, the court may, in place
389 of permanently revoking the offender's special probation, impose
390 a term of incarceration for a period of not less than 30 days
391 but not more than 6 months, after which the offender's term of
392 special probation may be reinstated. In determining whether to
393 order a period of incarceration in place of permanent
394 revocation, the court shall consider the recommendations of the
395 treatment provider with respect to the likelihood that such
396 confinement would serve to motivate the offender to make
397 satisfactory progress in treatment once special probation is
398 reinstated.

399 2. The short-term incarceration may occur only once with
400 respect to any offender unless the court is clearly convinced
401 that there are compelling and extraordinary reasons to justify
402 reimposing this disposition with respect to the offender. Any
403 such determination by the court to reimpose short-term
404 incarceration may be appealed by the state attorney.

405 (8) COSTS AND FEES.—

406 (a) The court, as a condition of its order, and after

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407 considering the offender's financial resources, may require the
408 offender to pay all or a portion of his or her costs associated
409 with his or her participation in the special-probation drug
410 treatment program. Such a decision must be consistent with the
411 offender's ability to pay.

412 (b) The court shall impose, as a condition of special
413 probation, the fine, penalty, fee, or restitution applicable to
414 the offense for which the offender was convicted or adjudicated
415 delinquent.

416 Section 2. This act shall take effect July 1, 2013.

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