

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 941 Treatment-based Drug Court Programs

**SPONSOR(S):** Children, Families & Seniors Subcommittee, Buchanan

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Morris	Brazzell
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Gusky
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Treatment-based drug courts are a type of problem-solving court aimed at providing an alternative to criminal imprisonment for offenders impaired by substance abuse. Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals may voluntarily enter into pretrial treatment programs or may be sentenced to post-adjudicatory treatment-based programs as a condition of probation or community control.

Electronic applications can be used to track attendance at work, school, and other functions. There are several available on the market, either for free or for a fee, for these purposes.

The bill allows a treatment-based drug court, if ordering a defendant to enter into a pretrial or postadjudicatory program, to offer the defendant the option for either electronic or written verification of participation in court-ordered ancillary services, including self-help and other support groups, if the defendant must document attendance at such services.

The bill would have no fiscal impact on state government. The bill may have an indeterminate fiscal impact on local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Substance Abuse**

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>1</sup> Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>2</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.<sup>3</sup> Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.<sup>4</sup>

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>5</sup> The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>6</sup>

Mental illness and substance abuse commonly co-occur. Approximately 7.9 million adults have co-occurring disorders.<sup>7</sup> In fact, more than half of all adults with severe mental illness are further impaired by substance use disorders (abuse or dependence related to alcohol or other drugs).<sup>8</sup> Drug abuse can cause individuals to experience one or more symptoms of another mental illness.<sup>9</sup> Additionally, individuals with mental illness may abuse drugs as a form of self-medication.<sup>10</sup> Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.<sup>11</sup>

#### Substance Abuse Treatment

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>12</sup> The laws resulted in separate funding streams and requirements for alcoholism and drug abuse; in response to the laws, the Florida Legislature enacted Chapters 396, F.S., (alcohol) and 397, F.S. (drug abuse).<sup>13</sup> Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.<sup>14</sup> However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address

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<sup>1</sup> World Health Organization, *Substance Abuse*, [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last visited Jan. 21, 2020).

<sup>2</sup> Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Jan. 21, 2020).

<sup>3</sup> National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Jan. 21, 2020).

<sup>4</sup> Id.

<sup>5</sup> Supra, note 2.

<sup>6</sup> Id.

<sup>7</sup> National Institute on Mental Illness, *Dual Diagnosis*, <https://www.nami.org/learn-more/mental-health-conditions/related-conditions/dual-diagnosis> (last visited Jan. 21, 2020).

<sup>8</sup> Psychology Today, *Co-Occurring Disorders*, <https://www.psychologytoday.com/conditions/co-occurring-disorders> (last visited Jan. 21, 2020).

<sup>9</sup> *Comorbidity: Addiction and Other Mental Illnesses*, National Institute on Drug Abuse, NIH Publication Number 10-5771, September 2010. <https://www.drugabuse.gov/sites/default/files/rccomorbidity.pdf> (last visited Jan. 21, 2020).

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Florida Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5.

<sup>13</sup> Id.

<sup>14</sup> Id.

Florida's substance abuse problem.<sup>15</sup> In 1993 legislation was adopted to combine Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).<sup>16</sup>

The Department of Children and Families licenses substance abuse treatment providers under ch. 397, F.S. Florida law references ancillary services, including self-help and other support groups and activities, as a service category for substance abuse services. However, such services are not a specified licensable service component encompassed in clinical treatment under ch. 397.<sup>17</sup> Licensable service treatment components specified in statute include:

- Addictions receiving facility;
- Day or night treatment;
- Day or night treatment with community housing;
- Detoxification;
- Intensive inpatient treatment;
- Intensive outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Outpatient treatment; and
- Residential treatment.

Ancillary services may be provided by providers of clinical treatment, or clinical treatment providers may refer individuals to ancillary services.<sup>18</sup>

### **Treatment-based Drug Courts**

Treatment-based drug courts are a type of problem-solving court aimed at providing an alternative to criminal imprisonment for offenders impaired by substance abuse.<sup>19</sup> Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals may voluntarily enter into pretrial treatment-based programs or may be sentenced to post-adjudicatory treatment-based programs as a condition of probation or community control. Entry into post-adjudicatory treatment-based programs must also be based upon the agreement of the individual to enter into the program. To assist these individuals with treatment, drug courts provide incentives, such as reduced penalties and increased support to the individual. Ultimately, entry into a treatment-based drug court program is voluntary, and the written consent and agreement of the participant is necessary for the court to order him or her into a treatment program. Throughout the drug court evaluation and treatment process, records of a drug court participant's screenings,<sup>20</sup> diagnosis, and progress<sup>21</sup> are made part of the participant's court record.

A drug court team develops a coordinated strategy for each participant in a drug court program.<sup>22</sup> A pretrial drug court program may use sanctions for noncompliance once a participant has agreed to the program, including placement in a treatment program or short periods of incarceration.<sup>23</sup> A court must dismiss the charges upon finding a person successfully completed the program.<sup>24</sup> If a person does not successfully complete the program, a court may order that person into further education and treatment or order that the charges revert to the normal channels for prosecution.<sup>25</sup>

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<sup>15</sup> Id.

<sup>16</sup> Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

<sup>17</sup> S. 397.311(26)(a), F.S.

<sup>18</sup> 65D-30.0044(2), F.A.C.

<sup>19</sup> Section 397.305, F.S.

<sup>20</sup> Eligibility screening by mental health treatment professionals uses "evidence-based assessment tools and procedures" in order to determine the individual's level of risk and whether he or she can be treated safely and effectively. Section 397.334(2)-(3) and (5), F.S.

<sup>21</sup> A participant's treatment plan and progress is overseen by a multi-disciplinary drug court team, usually consisting of a judge or judicial officer, a case manager or treatment provider, the participant's legal representative, the participant, and representatives from any relevant state agencies. Section 397.334(5), F.S.

<sup>22</sup> Ss. 397.334(4) and 948.08(6)(b), F.S.

<sup>23</sup> S. 948.08(6)(b), F.S.

<sup>24</sup> S. 948.08(6)(c), F.S.

<sup>25</sup> Id.

As of August 2019, Florida had 91 drug courts in operation, including 54 adult, 20 juvenile, 13 family dependency, and 4 DUI courts.

The components of drug courts include:<sup>26</sup>

- Integration of alcohol and other drug treatment services into justice system case processing;
- Non-adversarial approach;
- Early identification of eligible participants;
- Continuum of services;
- Alcohol and drug testing for abstinence;
- Coordinated strategy for responses to participants' compliance;
- Ongoing judicial interaction;
- Monitoring and evaluation for program effectiveness;
- Interdisciplinary education; and
- Partnerships with stakeholders.

In 2017, Florida drug courts admitted 6,195 participants, and 3,577 successfully completed their program.<sup>27</sup> In the same year, mental health courts admitted 929 participants, and 533 successfully completed their program.<sup>28</sup>

Florida law does not address ancillary services as an element of drug court-ordered compliance.

### Self-help Groups

Self-help groups are informal groups of people who come together to address common problems.<sup>29</sup> While self-help might imply a focus on the individual, mutual support is an important characteristic of such groups. These groups can focus on a variety of topics, including substance abuse. Twelve-step groups, such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), use a method that focuses on fellowships of people recovering from various addictions, compulsive behaviors, and mental health problems. Attending self-help groups may be part of a coordinated strategy developed by a drug court team for a drug court participant.

Self-help groups are not considered clinical treatment but are included as an ancillary service in Florida Statutes.<sup>30</sup> Clinical treatment typically includes working with a health care professional, such as a physician, psychiatrist, or licensed therapist. In contrast, self-help groups do not include treatment by a health care professional.

Self-help groups are typically anonymous, meaning that attendance verification can be difficult to obtain because members want to protect anonymity. As an example, AA has processes in place to verify attendance of court-ordered attendees while maintaining anonymity. When a court-ordered attendee requires written proof that he or she has attended AA meetings, the group's secretary or officer will only sign his or her first name or initials on an attendance document furnished by the court to verify the defendant's attendance.<sup>31</sup> However, some AA groups have elected not to sign documents to verify a defendant's attendance.<sup>32</sup> In some areas, courts furnish cooperating AA groups with sealed, stamped envelopes addressed to the court.<sup>33</sup> A defendant can write his or her name and return address on it and mail it to the court to verify attendance. Sign in sheets are also furnished by courts in some areas to anonymous groups where a defendant can sign his or her name after the meeting to confirm that

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<sup>26</sup> S. 397.334, F.S.

<sup>27</sup> Florida Courts, *Problem-Solving Courts Data*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Data> (last visited Jan. 30, 2020).

<sup>28</sup> Id.

<sup>29</sup> National Center for Biotechnology Information, *Self-help groups*, <https://www.ncbi.nlm.nih.gov/books/NBK310972/> (last visited Jan. 30, 2020).

<sup>30</sup> S. 397.64(24)(24)(e), F.S.

<sup>31</sup> Alcoholics Anonymous, *Alcoholics Anonymous as a Resource for Drug & Alcohol Court Professionals*, [https://www.aa.org/pages/en\\_US/alcoholics-anonymous-as-a-resource-for-drug-and-alcohol-court-professionals](https://www.aa.org/pages/en_US/alcoholics-anonymous-as-a-resource-for-drug-and-alcohol-court-professionals) (last visited Jan. 30, 2020).

<sup>32</sup> Id.

<sup>33</sup> Id.

defendant's attendance.<sup>34</sup> The group's secretary will then send the sheet back to the court. This way, the defendant's signature affirms he or she was at the meeting instead of the anonymous group itself.

It is difficult to determine if 12-step groups such as AA and NA are effective because they do not keep records.<sup>35</sup> A 2014 survey of AA members showed that 27% remained sober for less than one year and 24% remained sober for a period of 1-5 years.<sup>36</sup> The study also revealed that rates of abstinence are about twice as high among those who attended AA and more frequent attendance at meetings are related to higher rates of abstinence.<sup>37</sup>

### Electronic Verification of Self-Help Group Attendance

Electronic applications and software can be used to track a person's attendance at work, school, and other functions. There are several available on the market, either for free or for a fee, for these purposes. These applications may use a photo, fingerprint, or GPS location of a person as a means of verification. Such electronic applications can also be used to track court-mandated attendance at self-help group meetings in lieu of paper attendance verification.

### Effect of Proposed Changes

The bill allows a treatment-based drug court, if ordering a defendant to enter into a pretrial or postadjudicatory program, to offer the defendant the option for either electronic or written verification of participation in court-ordered ancillary services, including self-help and other support groups, if the defendant is ordered to document attendance at such services.

This means that some defendants participating in treatment-based drug courts may have the ability to make their own choices about which approach to use when verifying attendance.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 397.334, F.S., relating to treatment-based drug court programs.

**Section 2:** Provides an effective date of July 1, 2020.

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<sup>34</sup> Id.

<sup>35</sup> Harvard Health Publishing – Harvard Medical School, *How Alcoholics Anonymous Works*, [https://www.health.harvard.edu/newsletter\\_article/How\\_Alcoholics\\_Anonymous\\_works](https://www.health.harvard.edu/newsletter_article/How_Alcoholics_Anonymous_works) (last visited Jan. 30, 2020). See also Lee Ann Kaskutas, Dr.P.H., *Alcoholics Anonymous Effectiveness: Faith Meets Science*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2746426/> (last visited Jan. 30, 2020).

<sup>36</sup> Lee Ann Kaskutas, Dr.P.H., *Alcoholics Anonymous Effectiveness: Faith Meets Science*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2746426/> (last visited Jan. 30, 2020).

<sup>37</sup> Id. See also Brandon G. Bergman, Ph.D., M. Claire Greene, M.P.H., and John F. Kelly, Ph.D., *Psychiatric Comorbidity and 12-Step Participation: A Longitudinal Investigation of Treated Young Adults* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3946781/> (last visited Jan. 30, 2020).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may increase local government expenditures, to the extent the court chooses to offers an electronic verification approach and if the court would require information technology upgrades for implementation.

Pursuant to s. 397.334, F.S., counties that choose to fund treatment-based drug court programs must secure funding from sources other than the state for costs not otherwise assumed by the state pursuant to s. 29.004, F.S.

The funding for court related communication services, to include all telephone system infrastructure, computer systems, hardware, software, modems, printers, wiring, network connections, maintenance, support staff and services are the responsibility of the county pursuant to s. 29.008, F.S.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not require the court to order a defendant to use an electronic method to verify his or her attendance, but if an electronic application for attendance verification is chosen, that application may charge a fee to the defendant for the service.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**