

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 Committee on Criminal Justice

BILL: SB 1434

INTRODUCER: Senator Book

SUBJECT: Pretrial Intervention Programs

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 1434 amends s. 948.08(6)(b), F.S., to exclude certain persons from admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, F.S.

Specifically, persons who are charged with a sexual offense are not eligible for the programs. In the bill, “sexual offense” includes but is not limited to a violation of s. 787.06(3)(b), (d), (f), or (g), F.S.; ch. 794; ch. 800; ch. 827; s. 836.05; or ch. 847, F.S.

The bill becomes effective July 1, 2024.

II. Present Situation:

Intervention and Treatment-Based Program Criteria

Pretrial intervention programs,¹ treatment-based drug court programs,² and pretrial substance abuse education and treatment intervention programs,³ are available to persons who meet the statutory criteria and other requirements.

For example, any first time offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program on the approval of:

- The administrator of the program and the consent of the victim;
- The state attorney; and

¹ Section 948.08, F.S.

² Section 397.334, F.S.

³ Section 948.16, F.S.

- The judge who presided at the initial appearance hearing of the offender.⁴

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.⁵ Resumption of pending criminal proceedings shall be undertaken at any time if the program administrator or state attorney finds that the offender is not fulfilling his or her obligations under this plan or if the public interest so requires.⁶

Pursuant to s. 948.08(b), F.S., a person who might be otherwise amenable to a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program listed above, does not meet the criteria if he or she:

- Is charged with a crime involving violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence; or
- Has three or more nonviolent felony convictions.⁷

Human Trafficking, s. 787.06(3)(b), (d), (f) and (g), F.S.

Human trafficking means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.⁸

Section 787.06(3)(b), (d), (f), and (g), F.S., provide that any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity who does so by the transfer or transport of any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age from outside this state to within this state;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside this state to within this state; or
- For commercial sexual activity in which any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age, or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), F.S., is involved, commits the offense of human trafficking.

⁴ Section 948.08(2), F.S.

⁵ *Id.*

⁶ Section 948.08(4), F.S.

⁷ Section 948.08(6)(b), F.S.

⁸ Section 787.06(2)(d), F.S.

Sexual Battery, ch. 794, F.S.

Chapter 794, F.S., contains prohibitions against committing sexual battery and other similar provisions.

Sexual battery means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

Examples of crimes occur when a person:

- Commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof:
 - Uses or threatens to use a deadly weapon; or
 - Uses actual physical force likely to cause serious personal injury.⁹ or
- Who is 18 years of age or older and who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.¹⁰

Lewd or Lascivious, ch. 800, F.S.

Chapter 800, F.S., prohibits lewd or lascivious offenses. For example, a person commits unlawful exposure of sexual organs by:

- Exposing or exhibiting his or her sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner; or
- Being naked in public in a vulgar or indecent manner.¹¹

A person commits lewd or lascivious battery by, for example by:

- Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or
- Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.¹²

Child Abuse, ch. 827, F.S.

Criminal violations in ch. 827, F.S, include the following:

- Abuse, aggravated abuse, and neglect of a child.¹³
- The use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child to engage in a sexual performance or, being a

⁹ Section 794.011(3), F.S.

¹⁰ Section 794.011(5)(a), F.S.

¹¹ Section 800.03(1), F.S. The exposure of sexual organs by a mother breastfeeding her baby or an individual who is merely naked at any place provided or set apart for that purpose does not violate s. 800.03, F.S.

¹² Section 800.04(4), F.S.

¹³ Section 827.03, F.S.

parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance.¹⁴

Extortion, ch. 836, F.S.

Making threats or extorting a person with the intent to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will is a violation of s. 836.05, F.S.

Obscenity, ch. 847, F.S.

Chapter 847, F.S., contains crimes related to obscenity, for example, the prohibition against any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, F.S., to another person in this state or in another jurisdiction.¹⁵ The term “child pornography” means any image depicting a minor engaged in sexual conduct or any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 948.08(6)(b), F.S., to exclude certain persons from admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, F.S.

Specifically, persons who are charged with a sexual offense are not eligible for the programs. In the bill, “sexual offense” includes but is not limited to a violation of s. 787.06(3)(b), (d), (f), or (g), F.S.; ch. 794; ch. 800; ch. 827; s. 836.05; or ch. 847, F.S.

The bill reenacts ss. 43.51, 394.47892, 397.334, 910.035, 944.026, and 948.036 F.S, to incorporate the amendment made to s. 948.08, F.S., by the bill.

The bill becomes effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Section 827.071(2), F.S.

¹⁵ Section 847.0137(2), F.S.

¹⁶ Section 847.001(3), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None anticipated since the bill does not increase any existing penalties nor create any new ones.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 948.08, 43.51, 394.47892, 397.334, 910.035, 944.026, and 948.036.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.