

## House Bill No. 175

An act relating to drug court programs; providing a short title; amending s. 39.001, F.S.; providing additional legislative purposes and intent with respect to the treatment of substance abuse, including the use of the drug court program model; authorizing the court to require certain persons to undergo treatment following adjudication; amending s. 39.407, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment or evaluation upon a showing of good cause in connection with a shelter petition or petition for dependency; amending ss. 39.507 and 39.521, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment as part of an adjudicatory order or pursuant to a disposition hearing; requiring a showing of good cause; authorizing the court to require participation in a treatment-based drug court program; authorizing the court to impose sanctions for noncompliance; amending s. 397.334, F.S.; revising legislative intent with respect to treatment-based drug court programs to reflect participation by community support agencies, the Department of Education, and other individuals; including postadjudicatory programs as part of treatment-based drug court programs; providing requirements and sanctions, including treatment by specified licensed service providers, jail-based treatment, secure detention, or incarceration, for the coordinated strategy developed by the drug court team to encourage participant compliance; requiring each judicial circuit to establish a position for a coordinator of the treatment-based drug court program, subject to annual appropriation by the Legislature; authorizing the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program; providing for membership of the committee; revising language with respect to an annual report; amending s. 910.035, F.S.; revising language with respect to conditions for the transfer of a case in the drug court treatment program to a county other than that in which the charge arose; amending ss. 948.08, 948.16, and 985.306, F.S., relating to felony, misdemeanor, and delinquency pretrial substance abuse education and treatment intervention programs; providing for application of the coordinated strategy developed by the drug court team; providing for expungement of certain records and pleas; removing provisions authorizing appointment of an advisory committee, to conform to changes made by the act; providing an effective date.

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

Section 1. This act may be cited as the “Robert J. Koch Drug Court Intervention Act.”

Section 2. Subsection (4) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(4) SUBSTANCE ABUSE SERVICES.—

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat substance abuse in families and that treatment is cost effective.

(b) The Legislature establishes the following goals for the state related to substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of substance abuse on families involved in protective supervision or foster care and reduce substance abuse, including alcohol abuse, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services to children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the drug court program model established by s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address substance abuse problems as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment prior to adjudication shall be voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

Section 3. Subsection (15) of section 39.407, Florida Statutes, is amended, and subsection (16) is added to that section, to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, ~~or mental, or substance abuse examination of parent or person with or requesting child custody of child.~~—

(15) At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

(16) At any time after a shelter petition or petition for dependency is filed, the court may order a person who has custody or is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The order may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

Section 4. Subsection (9) is added to section 39.507, Florida Statutes, to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(9) After an adjudication of dependency, or a finding of dependency where adjudication is withheld, the court may order a person who has custody or is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subsection may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

Section 5. Paragraph (b) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child, to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires substance abuse treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 6. Section 397.334, Florida Statutes, is amended to read:

397.334 Treatment-based drug court programs.—

(1) Each county may fund a treatment-based drug court program under which persons in the justice system assessed with a substance abuse problem will be processed in such a manner as to appropriately address the severity of the identified substance abuse problem through treatment services plans tailored to the individual needs of the participant. It is the intent of the Legislature to encourage the Department of Corrections, the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and such ~~other~~ agencies, local governments, law enforcement agencies, and other interested public or private sources, and individuals to support the creation and establishment of these problem-solving court programs. Participation in the treatment-based drug court programs does not divest any public or private agency of its responsibility for a child or adult, but enables ~~allows~~ these agencies to better meet their needs through shared responsibility and resources.

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

~~(3)~~(2) The treatment-based drug court programs shall include therapeutic jurisprudence principles and adhere to the following 10 key components, recognized by the Drug Courts Program Office of the Office of Justice Programs of the United States Department of Justice and adopted by the Florida Supreme Court Treatment-Based Drug Court Steering Committee:

(a) Drug court programs integrate alcohol and other drug treatment services with justice system case processing.

(b) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

(c) Eligible participants are identified early and promptly placed in the drug court program.

(d) Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

(e) Abstinence is monitored by frequent testing for alcohol and other drugs.

(f) A coordinated strategy governs drug court program responses to participants' compliance.

(g) Ongoing judicial interaction with each drug court program participant is essential.

(h) Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.

(i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.

(j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

(4)(3) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.306, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

(5) Contingent upon an annual appropriation by the Legislature, each judicial circuit shall establish, at a minimum, one coordinator position for the treatment-based drug court program within the state courts system to coordinate the responsibilities of the participating agencies and service providers. Each coordinator shall provide direct support to the treatment-based drug court program by providing coordination between the multidisciplinary team and the judiciary, providing case management, monitoring compliance of the participants in the treatment-based drug court program with court requirements, and providing program evaluation and accountability.

(6)(4)(a) The Florida Association of Drug Court Program Professionals is created. The membership of the association may consist of treatment-based drug court program practitioners who comprise the multidisciplinary treatment-based drug court program team, including, but not limited to, judges, state attorneys, defense counsel, treatment-based drug court program coordinators, probation officers, law enforcement officers, community representatives, members of the academic community, and treatment professionals. Membership in the association shall be voluntary.

(b) The association shall annually elect a chair whose duty is to solicit recommendations from members on issues relating to the expansion, operation, and institutionalization of treatment-based drug court programs. The chair is responsible for providing on or before October 1 of each year the association's recommendations and an annual report to the appropriate Supreme Court Treatment-Based Drug Court Steering committee or to the appropriate personnel of the Office of the State Courts Administrator, and

~~shall submit a report each year, on or before October 1, to the steering committee.~~

(7)(5) If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004. However, this does not preclude counties from using treatment and other service dollars provided through state executive branch agencies. Counties may provide, by interlocal agreement, for the collective funding of these programs.

(8) The chief judge of each judicial circuit may appoint an advisory committee for the treatment-based drug court program. The committee shall be composed of the chief judge, or his or her designee, who shall serve as chair; the judge of the treatment-based drug court program, if not otherwise designated by the chief judge as his or her designee; the state attorney, or his or her designee; the public defender, or his or her designee; the treatment-based drug court program coordinators; community representatives; treatment representatives; and any other persons the chair finds are appropriate.

Section 7. Paragraphs (b) and (e) of subsection (5) of section 910.035, Florida Statutes, are amended to read:

910.035 Transfer from county for plea and sentence.—

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

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

(e) Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred shall dispose of the case pursuant to s. 948.08(6). If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Punishment Code ~~case shall be prosecuted as determined by the state attorneys of the sending and receiving counties.~~

Section 8. Subsections (6), (7), and (8) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.—

(6)(a) Notwithstanding any provision of this section, a person who is charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud; who has not been 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; and who has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in this section is eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period of not less than 1 year in duration, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court or the state attorney may deny the defendant's admission to such a program.

2. If the state attorney believes that the facts and circumstances of the case suggest the defendant's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this subsection, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for non-compliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

~~(c)~~(b) At the end of the pretrial intervention period, the court shall consider the recommendation of the administrator pursuant to subsection (5) and the recommendation of the state attorney as to disposition of the pending charges. The court shall determine, by written finding, whether the defendant has successfully completed the pretrial intervention program.

~~(e)~~1. Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(3), if the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment, which may include substance abuse treatment programs offered by licensed service providers as defined in s. 397.311 or jail-based treatment programs, or order that the charges revert to normal channels for prosecution.

2. The court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program.

(d) Any entity, whether public or private, providing a pretrial substance abuse education and treatment intervention program under this subsection must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3).

~~(7) The chief judge in each circuit may appoint an advisory committee for the pretrial intervention program composed of the chief judge or his or her designee, who shall serve as chair; the state attorney, the public defender, and the program administrator, or their designees; and such other persons as the chair deems appropriate. The advisory committee may not designate any defendant eligible for a pretrial intervention program for any offense that is not listed under paragraph (6)(a) without the state attorney's recommendation and approval. The committee may also include persons representing any other agencies to which persons released to the pretrial intervention program may be referred.~~

~~(7)(8)~~ The department may contract for the services and facilities necessary to operate pretrial intervention programs.

Section 9. Section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.—

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for non-compliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. The coordinated strategy must be

provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

(2) At the end of the pretrial intervention period, the court shall consider the recommendation of the treatment program and the recommendation of the state attorney as to disposition of the pending charges. The court shall determine, by written finding, whether the defendant successfully completed the pretrial intervention program.

(a) Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(3), if the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.

(b) The court shall dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

(3) Any public or private entity providing a pretrial substance abuse education and treatment program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(3).

Section 10. Section 985.306, Florida Statutes, is amended to read:

985.306 Delinquency pretrial intervention program.—

(1)(a) Notwithstanding any provision of law to the contrary, a child who is charged under chapter 893 with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence; solicitation for purchase of a controlled substance; or obtaining a prescription by fraud, and who has not previously been adjudicated for a felony nor been admitted to a delinquency pretrial intervention program under this section, is eligible for voluntary admission into a delinquency pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge or alternative sanctions coordinator of the circuit to the extent that funded programs are available, for a period based on the program requirements and the treatment services that are suitable for the offender of not less than 1 year in duration, upon motion of either party or the court's own motion. However, if the state attorney believes that the facts and circumstances of the case suggest the child's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes by a preponderance of the evidence at such hearing that the child was involved in the dealing and selling of controlled substances, the court shall deny the child's admission into a delinquency pretrial intervention program.

(2) While enrolled in a delinquency pretrial intervention program authorized by this section, a child is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the child for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or serving a period of secure detention under this chapter. The coordinated strategy must be provided in writing to the child before the child agrees to enter the pretrial treatment-based drug court program or other pretrial intervention program. Any child whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

~~(3)(b)~~ At the end of the delinquency pretrial intervention period, the court shall consider the recommendation of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, whether the child has successfully completed the delinquency pretrial intervention program.

~~(e)1.~~ Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(3), if the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue in an education, treatment, or urine monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution.

2. The court may dismiss the charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

~~(4)(d)~~ Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, and a urine monitoring program under this section must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3). It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

~~(2) The chief judge in each circuit may appoint an advisory committee for the delinquency pretrial intervention program composed of the chief judge or designee, who shall serve as chair; the state attorney, the public defender, and the program administrator, or their designees; and such other persons as the chair deems appropriate. The committee may also include persons representing any other agencies to which children released to the delinquency pretrial intervention program may be referred.~~

Section 11. This act shall take effect upon becoming a law.

Approved by the Governor June 7, 2006.

Filed in Office Secretary of State June 7, 2006.