

## Committee Substitute for Senate Bill No. 1726

An act relating to postadjudicatory and pretrial treatment-based drug court programs; amending s. 397.334, F.S.; specifying criteria that a court must consider before sentencing a person to a postadjudicatory treatment-based drug court program; providing for the judge presiding over a program to hear violations of probation or community control by program participants; requiring circuit courts to report data relating to postadjudicatory treatment-based drug court programs to the Office of the State Courts Administrator; amending s. 921.0026, F.S.; providing that a court may depart from a lowest permissible sentence if the defendant is amenable to a drug court program and is otherwise qualified; amending s. 948.01, F.S.; authorizing a court to place certain nonviolent felony offenders who are on probation or community control into a postadjudicatory treatment-based drug court program; amending s. 948.06, F.S.; authorizing a court to place certain nonviolent felony offenders who violate their probation or community control into a postadjudicatory treatment-based drug court program; amending s. 948.08, F.S.; authorizing a court to place certain nonviolent felony offenders into a pretrial substance abuse education and treatment intervention program; conforming cross-references; amending s. 948.20, F.S.; authorizing a court to place certain chronic substance abusers who are nonviolent felony offenders into a postadjudicatory treatment-based drug court program; amending ss. 948.16 and 948.345, F.S.; conforming cross-references; providing legislative intent with respect to monitoring the programs; requiring that the Office of Program Policy Analysis and Government Accountability evaluate the programs and report to the Legislature; providing an effective date.

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

Section 1. Present subsections (3) through (8) of section 397.334, Florida Statutes, are renumbered as subsections (4) through (9), respectively, a new subsection (3) is added to that section, and present subsection (5) of that section is amended, to read:

397.334 Treatment-based drug court programs.—

(3)(a) Entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based upon the sentencing court's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

(b) An offender who is sentenced to a postadjudicatory drug court program and who, while a drug court participant, is the subject of a violation of probation or community control under s. 948.06, based solely upon a failed

or suspect substance abuse test administered pursuant to s. 948.01 or s. 948.03, shall have the violation of probation or community control heard by the judge presiding over the postadjudicatory drug court program. The judge shall dispose of any such violation, after a hearing on or admission of the violation, as he or she deems appropriate if the resulting sentence or conditions are lawful.

(6)(a)(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.

(b) Each circuit shall report sufficient client-level and programmatic data to the Office of State Courts Administrator annually for purposes of program evaluation. Client-level data include primary offenses that resulted in the drug court referral or sentence, treatment compliance, completion status and reasons for failure to complete, offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Programmatic data include referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

Section 2. Subsection (3) of section 921.0026, Florida Statutes, is amended, and paragraph (m) is added to subsection (2) of that section, to read:

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

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

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).

(3) Except as provided in paragraph (2)(m), the defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range.

Section 3. Subsection (7) is added to section 948.01, Florida Statutes, to read:

948.01 When court may place defendant on probation or into community control.—

(7)(a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer and the defendant is a nonviolent felony offender, amenable to substance abuse treatment, and otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third-degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

(b) The defendant must be fully advised of the purpose of the program and the defendant must agree to enter the program. The original sentencing court shall relinquish jurisdiction of the defendant's case to the postadjudicatory drug court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply with the terms thereof, or the defendant's sentence is completed.

Section 4. Paragraph (i) is added to subsection (2) of section 948.06, Florida Statutes, to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(i)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the court may order the defendant to successfully complete a postadjudicatory treatment-based drug court program if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation and the violation was due only to a failed or suspect substance abuse test;

b. The offender's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer after including points for the violation;

c. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third-degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;

d. The court determines that the offender is amenable to the services of a postadjudicatory treatment-based drug court program;

e. The court has explained the purpose of the program to the offender and the offender has agreed to participate; and

f. The offender is otherwise qualified to participate in the program under the provisions of s. 397.334(3).

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory treatment-based drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 5. Paragraphs (a), (b), and (c) of subsection (6) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.—

(6)(a) For purposes of this subsection, the term “nonviolent felony” means a third-degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Notwithstanding any provision of this section, a person who is charged with a nonviolent felony and is identified as having a substance abuse problem or 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(4) ~~s. 397.334(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 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) 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. Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(4) ~~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. The court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program.

Section 6. Paragraph (b) of subsection (1) and subsection (2) of section 948.16, Florida Statutes, are amended to read:

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

(1)

(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(4) ~~s. 397.334(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 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. Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(4) 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. The court shall dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

Section 7. Section 948.20, Florida Statutes, is amended to read:

948.20 Drug offender probation.—If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent felony if such nonviolent felony is committed on or after July 1, 2009, and notwithstanding s. 921.0024 the defendant's Criminal Punishment Code scoresheet total sentence points are 52 points or fewer, the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt.; and, In either case, the court it may also stay and withhold the imposition of sentence and place the defendant on drug offender probation or into a postadjudicatory treatment-based drug court program if the defendant otherwise qualifies. As used in this section, the term "nonviolent felony" means a third-degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

(1) The Department of Corrections shall develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan. The program may include the use of graduated sanctions consistent with the conditions imposed by the court. Drug offender probation status shall include surveillance and random drug testing, and may include those measures normally associated with community control, except that specific treatment conditions and other treatment approaches necessary to monitor this population may be ordered.

(2) Offenders placed on drug offender probation are subject to revocation of probation as provided in s. 948.06.

Section 8. Subsections (2) and (3) of section 985.345, Florida Statutes, are amended to read:

985.345 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(4) 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) 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. Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(4) ~~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. The court may dismiss the charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

Section 9. The Legislature intends to monitor and evaluate the implementation and effectiveness of postadjudicatory treatment-based drug court programs, particularly as they identify and serve offenders pursuant to ss. 948.01(7) and 948.06(2)(i), Florida Statutes. The Office of Program Policy Analysis and Government Accountability shall evaluate the effectiveness of postadjudicatory treatment-based drug court programs and issue a report of its findings and recommendations to the Legislature by October 1, 2010.

Section 10. This act shall take effect July 1, 2009.

Approved by the Governor May 27, 2009.

Filed in Office Secretary of State May 27, 2009.