

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2210

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: An Act Relating to Substance Abuse Treatment

DATE: March 26, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Favorable/CS
2.	_____	_____	CJ	_____
3.	_____	_____	JU	_____
4.	_____	_____	AAV	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute Senate Bill 2210 allows the court, at the shelter hearing or adjudicatory hearing, to order a substance abuse assessment if the mental or physical condition of a child or the child’s parent, caregiver, legal custodian, or other person requesting custody of the child is in controversy. The court may require persons to participate in substance abuse treatment services when it is appropriate and services are available, including participation and compliance with a treatment-based drug court program.

The bill specifies that with the approval of the state attorney, a defendant (child or adult) assessed with a substance abuse problem who is charged for the first time with a nonviolent third-degree felony or who has previously been convicted of a nonviolent third-degree felony and is charged with a second or subsequent nonviolent third-degree felony may be referred to a pretrial substance abuse education and treatment intervention program. Upon completion of the program the defendant is entitled to dismissal of the pending charge involving a nonviolent third-degree felony.

This bill revises language allowing for the transfer of a case involved in the drug court treatment program to a different county. The county receiving the transfer is authorized to dispose of the case upon successful or unsuccessful completion of the program.

The bill states that based upon an annual appropriation, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program within the state court system to coordinate the responsibilities of the participating agencies and service providers.

This bill substantially amends sections 39.001, 39.402, 39.407, 39.507, 39.521, 39.701, 397.334, 910.035, 948.08, and 985.306, of the Florida Statutes.

## II. Present Situation:

There is no requirement in ch. 39, F.S., for a child or the child's parent, caregiver, legal custodian, or other person requesting custody of the child to be evaluated for substance abuse problems. However, the National Drug Court Institute and a growing amount of the professional literature report that there is a significant link between child maltreatment and substance abuse. Studies suggest that 80 percent of substantiated child abuse cases involve parents who are involved with alcohol or other drugs. State substance abuse data indicates that four out of every five persons needing substance abuse treatment are also involved in the criminal justice system. Many parents, whose children are under the custody or supervision of the state due to abuse or neglect, have significant substance abuse problems that contribute to family instability and domestic violence.

In April, 1999, the Department of Health and Human Services made a report to Congress which highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care. It stated that children in substance abusing households: 1) were more likely than others to be served in foster care (54 percent in foster care versus 23 percent in non-substance abusing cases); 2) spent longer periods of time in foster care than other children (median 11 months versus 5 months for others in foster care); and 3) were less likely to have left foster care within a year (55 percent versus 70 percent).

Section 397.334, F.S., establishes a treatment-based drug court program in each judicial circuit in Florida. Treatment-based drug court programs attempt to integrate judicial supervision, treatment, accountability, and sanctions to reduce recidivism in drug-related crimes. Each judicial circuit is directed to establish a drug court program. The program may be established in misdemeanor, felony, family, or other court divisions. The legislation stated that it is the intent of the Legislature to encourage other state agencies to support the creation and establishment of the drug court programs. Since its inception, there has been a significant increase in the number of drug courts and the number of offenders being served. Drug courts have been beneficial in creating effective partnerships among the drug court judge, the public defender's and state's attorneys offices, law enforcement, and community-based providers. Offenders receiving treatment through the drug court program experience better outcomes than other offenders including reduced recidivism.

Section 948.08(6), F.S., allows defendants charged with certain drug possession felonies to be admitted into pretrial intervention programs if the defendant has not previously been convicted of a felony and has not previously been referred to pretrial intervention. If the state attorney establishes, by a preponderance of the evidence, that the defendant was involved in dealing or selling of drugs, the court must deny admission into the pretrial intervention program. If the defendant successfully completes the program, the case is dismissed. If the defendant does not complete the program, the prosecution proceeds.

Chapter 2001-48, L.O.F., amended s. 948.08(6)(a), F.S., to add tampering with evidence, solicitation for purchase, or obtaining a prescription by fraud to the group of crimes which makes an adult defendant eligible for pretrial intervention. These crimes are often related to a substance abuse problem.

Section 985.306, F.S., contains provisions for a pretrial intervention program in the juvenile justice system. A child who is charged under ch. 893, F.S., with a felony of the second or third

degree for purchase or possession of a controlled substance and who has not previously been adjudicated for a felony nor been admitted to a delinquency pretrial intervention program is eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program for no less than 1 year when approved by the chief judge or alternative sanctions coordinator of the circuit to the extent that funds are available.

### **III. Effect of Proposed Changes:**

CS/SB 2210 amends s. 39.001, F.S., to recognize that substance abuse is a primary cause of child abuse and neglect and that early referral and comprehensive treatment are cost effective and can help combat substance abuse problems in families. The bill also recognizes that treatment-based drug court programs that integrate judicial supervision, treatment, accountability, sanctions, and community support greatly increase the effectiveness of substance abuse treatment and reduce the number of cases of child abuse and neglect. The bill specifies goals identified by the family safety program and the substance abuse program within the Department of Children and Family Services (department) such as ensuring safety of children, preventing and remediating the consequences of substance abuse on families involved in protective supervision or foster care, and supporting families in recovery. The bill also specifies that treatment may be required by the court following adjudication.

The bill states that children and parents should be evaluated for substance abuse problems early in the assessment process and that participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication of dependency.

The bill amends s. 39.402, F.S., to specify that the court may order the person to submit to a substance abuse assessment at the shelter hearing if the mental or physical condition of a child or his or her parents, caregiver, legal custodian, or the person requesting custody of the child is in controversy. The assessment must be conducted by a qualified professional as defined in s. 397.311, F.S.

The bill amends s. 39.507, F.S., to specify that at the adjudicatory hearing for dependency, the court may require persons to participate in substance abuse treatment services when it is appropriate and services are available, including participation and compliance with a treatment-based drug court program. The bill states that the court including the treatment-based drug court program shall oversee the progress and compliance with treatment by the child or the child's parents, legal custodian, caregiver, or other persons requesting custody of the child and shall impose appropriate available sanctions for noncompliance.

Section 39.701, F.S., is amended to allow the court to extend the time limitation of the case plan or modify the terms of the plan which may include a requirement that the parent, foster parent, or legal custodian participate in treatment-based drug court programs.

The department reports that the changes in this bill will help to open the door for persons needing services. It will strengthen the linkages between substance abuse and dependency court and result in positive outcomes. It has generally been found that the levels of contact the

defendant has with the courts while participating in treatment positively impact successful completion of the program.

Section 397.334, F.S., is amended to add the Department of Education to the local agencies that the Legislature encourages to support treatment-based drug courts. The bill specifies that treatment-based drug court programs may include postadjudicatory programs. Supervision may be provided for offenders who transfer from jail or a prison-based treatment program into the community. This section is also amended to change the reference from "Steering Committee" to "Task Force" to reflect a recent change made by the Supreme Court. This bill also authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program and specifies that the composition of the committee shall consist of: the chief judge, who shall also serve as chair; the judge of the treatment-based drug court program; the state attorney; the public defender; the treatment-based drug court program coordinators; community representatives, including representatives from the community treatment program; and any other persons the chair finds to be appropriate. The chief judge, judge of the treatment-based court program, state attorney and the public defender may each appoint a designee for the committee if they wish to do so.

Section 910.035, F.S., is amended to revise language with respect to conditions for transferring the cases of defendants involved in the drug treatment program. Trial courts are allowed to accept a plea of nolo contendere when a transfer to another county is approved by all parties. Additionally, the court to which the case is transferred may close the case either successfully or unsuccessfully based upon program completion. If the defendant does not complete the program successfully the case is to be disposed of within the guidelines of the Criminal Punishment Code. This will reduce the time and costs involved in transporting the defendant back to the county of origin for case disposition.

The bill states that contingent upon an annual appropriation, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program within the state court system to coordinate the responsibilities of the participating agencies and service providers. The bill amends s. 948.08, F.S., to allow a defendant assessed with a substance abuse problem who is charged for the first time with a nonviolent third-degree felony and a defendant assessed with a substance abuse problem who has previously been convicted of a nonviolent third-degree felony to be referred to a pretrial substance abuse education and treatment intervention program with the approval of the state attorney. Upon completion of the program the defendant is entitled to dismissal of the pending charge involving a nonviolent third-degree felony. The bill removes the statutory provision that would not allow a defendant to enter a pretrial substance abuse education and treatment program if, previously, he or she had rejected the offer, on record, to enter the program.

The bill amends s. 985.306, F.S., to state that a child who is charged with a misdemeanor; a felony of the second or third degree for purchase or possession of a controlled substance under ch. 893 F.S.; 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 is eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill would have a fiscal impact on children and their families with private health insurance who are in the child protection system and for whom the court orders substance abuse assessment and treatment services.

**C. Government Sector Impact:**

Allowing the county to which the case is transferred to dispose in the case will reduce the costs that are currently incurred by sending the case and defendant back to the county of origin for disposition.

There will be additional costs to the department for substance abuse assessments and treatment services for the children and their families needing those services who are either in shelter care or have been adjudicated dependent. However, it is difficult for the department to estimate the full fiscal impact of substance abuse assessment and treatment services for those children and their families in the child protection system who need them and are not currently receiving services. During the past year there has been expansion in substance abuse services that support the concept of this bill. The department believes it can absorb any fiscal impact of this bill in its current form within current and appropriated funds.

There is no data available from the Department of Juvenile Justice to determine which offenses might be related to the new criteria established in the bill (a child who is charged with a misdemeanor; a felony of the second or third degree for purchase or possession of a controlled substance under ch. 893 F.S; 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) for admission into a delinquency pretrial substance abuse education and treatment intervention program.

Also, no information is available on how successful these placements would be to determine if the drug treatment and education program would delay rather than avoid the costs of a placement in a juvenile justice commitment program.

The DCF substance abuse program currently provides screening, assessment, and treatment services to children in the community. All children taken to a Juvenile Assessment Center (JAC) or a Detention Center are screened and assessed for substance abuse issues and some level of service beyond prevention services are offered. Although the number of these children that do not proceed to a residential placement as a result of these services is not known, it is known that within the 74 percent of children served that are under state custody, 90 percent of them are involved with juvenile justice.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.