

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 177 CS Drug Court Programs  
**SPONSOR(S):** Adams, and others  
**TIED BILLS:** none **IDEN./SIM. BILLS:** CS/SB 184

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Bond</u>	<u>Kramer</u>
2) <u>Juvenile Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Whittier</u>	<u>White</u>
3) <u>Justice Appropriations Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>DeBeaugrine</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Bond</u>	<u>De La Paz</u>
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The term "drug court" refers to court programs that specialize in cases where alcohol or drug addiction has led a person into trouble with the law.

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker or caretakers. This bill authorizes a dependency court to order individuals involved in a dependency court case to be evaluated for drug or alcohol problems, and allows the court to refer an individual to dependency drug court for monitoring and treatment after a finding of dependency. Individuals may voluntarily enter drug court prior to a finding of dependency. This bill allows incarceration of persons referred to dependency drug court who fail to comply with the conditions of the referral.

This bill also modifies laws regarding drug court programs for adult and juvenile criminal offenders. Currently, those programs are primarily structured as pre-trial diversion programs. This bill provides for post-adjudicatory and community supervision drug court referrals. Drug courts have traditionally used sanctions, including short terms of incarceration, as punishment for participants who violate terms of their treatment plan; however, a recent court ruling found that such incarceration for persons in a pre-adjudicatory drug court program is not authorized by law. This bill provides for incarceration of a person violating his or her treatment plan ordered by a drug court or as part of a pre-trial intervention program, which incarceration is in addition to any term of incarceration that may be ordered should the person leave drug court and then be convicted of the offense. Participation in a drug court prior to adjudication or a pre-trial intervention program is voluntary. The bill further requires that participants acknowledge in writing that they wish to enter the program and understand the program requirements and sanctions for non-compliance.

This fiscal impact to state and local governments of this bill is unknown. Since the bill requires incarceration and jail-based treatment, the bill would appear to require counties to expend funds and would fall under the mandates provisions of Article VII, Section 18 of the Florida Constitution. Since the bill deals with criminal laws, however, the bill would appear to be exempt from this section. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0177e.JC.doc  
**DATE:** 4/11/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government.** -- The bill authorizes the court to order a substance abuse assessment and evaluation after a shelter petition or dependency petition has been filed for individuals involved in the case. The bill provides that an individual involved in a dependency proceeding can be ordered into a drug court. The bill expands the scope of drug court programs beyond pre-trial intervention programs for criminal defendants as currently authorized in s. 397.334(3), F.S. The expanded scope of these programs would include dependency drug court, post-adjudicatory programs, the monitoring of sentenced offenders, and supervision of offenders who transfer from a jail or prison based treatment program into the community. This bill provides for incarceration of individuals who violate drug court terms and conditions even if they have not been convicted of a crime.

According to representatives of the courts, many of the new activities authorized by this bill are already being undertaken under more generic authority provided to the court. For instance, the court is already authorized in s. 39.407, F.S. to order physical and mental health evaluations of a parent. Some judges order substance abuse assessments and evaluations under this authority. Courts also have the authority to order criminal offenders to probation and have the authority to set special conditions such as compliance with a substance abuse treatment program.

**Promote personal responsibility.** -- This bill provides for court-ordered evaluations, substance abuse treatment and court-monitored compliance with such orders. Sanctions are authorized for individuals who do not comply with court orders.

**Empower families.** -- This bill provides increased court responsibilities in dependency court matters

#### B. EFFECT OF PROPOSED CHANGES:

##### Court Proceedings Related to Minors

There are two main court systems specifically tailored for minors. Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker or caretakers. Delinquency court is for minors who commit crimes that do not warrant transfer to the adult criminal justice system.

In January 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.<sup>1</sup> CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly \$10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997. In connection with the report, CASA conducted a national survey of family court and child welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases. The survey revealed the following:

- 71.6 percent of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.

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<sup>1</sup> "No Safe Haven: Children of Substance-Abusing Parents," January 1999.

- Almost 80 percent of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while nearly 40 percent stated that substance abuse was a factor in over 75 percent of cases.
- 75.7 percent of respondents believed that children of substance abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42 percent of all caseworkers reported that they were either not required or uncertain if they were required to report substance abuse when investigating child abuse and neglect cases.

In April 1999, the Department of Health and Human Services issued 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 were more likely than others to be served in foster care, spent longer periods of time in foster care than other children, and were less likely to have left foster care within a year.

### Drug Court System

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.<sup>2</sup> The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were “revolving back through the criminal justice system because of underlying problems of drug addiction.”<sup>3</sup> The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment services and the criminal justice system together.<sup>4</sup>

Currently, 88 drug courts operate in 43 counties,<sup>5</sup> in all but one judicial circuit.<sup>6</sup> There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.<sup>7</sup>

In 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced recidivism rate,<sup>8</sup> and that drug courts are a cost-effective alternative to incarceration of drug offenders.<sup>9</sup>

Drug courts operate on a reward and punishment system.<sup>10</sup> The reward for successful completion of the program is not only a better life, but also lowering of a criminal charge to a lesser offense, or even dismissal of the criminal charge. The punishment is typically jail time for failing to comply with the program, plus continuation of the criminal process and possible additional jail time upon conviction. Recently, a district court ruled that a drug court participant cannot be separately jailed for violating the terms of the drug court program, and then tried and convicted for the underlying criminal offense.<sup>11</sup>

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<sup>2</sup> Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p. 1.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Report on Florida’s Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, at page 5.

<sup>6</sup> The 3<sup>rd</sup> judicial circuit currently does not have an operational drug court, but has one in the planning stage.

<sup>7</sup> *Report on Florida’s Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, at page 5.

<sup>8</sup> *The Florida Drug Court System*, revised January 2004, at page 4.

<sup>9</sup> *Report on Florida’s Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, at page 5.

<sup>10</sup> In colloquial terms, they operate a “carrot and stick”.

<sup>11</sup> *Diaz v. State*, 884 So.2d 299 (Fla. 4th DCA 2004).

## Effect of Bill

### Dependency Court

This bill amends s. 39.001, F.S., to establish the following goals for substance abuse treatment services in the dependency process:

- Safety of children
- Prevent and remediate the consequences of substance abuse
- Expedite permanent placement
- Support families in recovery

This bill amends s. 39.407, F.S., to authorize a dependency court to order a child, and any person who has custody or is requesting custody of a child in a dependency proceeding, to submit to substance abuse assessment or evaluation upon a showing of good cause. An assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311, F.S.<sup>12</sup> This requirement does not authorize placement of a child with a person who has a substance abuse problem other than the parent.

The bill amends s. 39.507, F.S., to provide that, after adjudication of dependency, the court may require an individual to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation and compliance with a treatment-based drug court program. Prior to a finding of dependency, participation in a treatment, including a treatment-based drug court program is voluntary. The court, in cooperation with public agencies, must oversee the progress and compliance with treatment. Appropriate sanctions for noncompliance may include a finding that the person is an inappropriate placement for the child.

The appropriate available sanctions for noncompliance could include citation for contempt of court, for which a person may be incarcerated for up to 6 months.

Section 39.521, F.S., related to disposition hearings, is amended in a like manner. The failure of an actual or proposed caregiver to comply with treatment protocol may be considered by the court when determining the final placement of the child.

This bill amends s. 39.701, F.S., to provide that a dependency court may amend the dependency plan in order to add a requirement that a caregiver participate in substance abuse treatment.

### Drug Court Programs

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. A defendant who successfully completes the drug court program receives the benefit of dismissal of the criminal charge, thereby sparing the defendant from jail and from a permanent criminal record of a conviction. Pretrial drug court programs suspend the setting of a trial date, and use the threat of a resetting the trial date, and possible conviction, as a means to encourage compliance.

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<sup>12</sup> Section 397.311(24), F.S., defines "qualified professional" to mean "a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment."

This bill amends s. 397.334, F.S., to specify that a defendant must agree to his or her placement into a pretrial treatment-based drug court program. The agreement must be in writing, and must include a statement of the possible sanctions.

This bill also amends s. 397.334, F.S., to add that, in addition to pretrial intervention programs, treatment-based drug court programs may serve individuals in the dependency process, and convicted offenders. The strategy developed for any person who agrees to drug court must include a description of the possible sanctions for noncompliance with the drug court requirements.

This bill provides that sanctions for violation of the treatment required by a drug court or other pre-trial intervention program may include incarceration separate from the term of incarceration that may be imposed upon conviction of the crime.<sup>13</sup> Confinement-based treatment and contempt of court are allowed. The bill does not provide, but general law does provide, that the term of incarceration for contempt of court is 6 months for adults. For juveniles, the term of incarceration in a secure detention facility is 5 days for a first violation and 15 days for a subsequent violation.

This bill also amends s. 397.334, F.S., to require 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 courts system.<sup>14</sup>

This bill also moves provisions regarding appointment of an advisory committee to develop and oversee a treatment-based drug court program to s. 397.334, F.S.

Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have his or her case transferred to a county other than that in which the charge arose if the drug court program agrees and if specific conditions are met. The bill amends this provision at s. 910.035(5), F.S., to specify that if approval for transfer is received from all parties, the trial court must accept a plea of nolo contendere before entering the transfer order. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case, including a disposition that would require a trial should the defendant be removed from the program.

This bill amends s. 948.08, F.S., regarding criminal court pretrial intervention programs in general, and s. 948.16, F.S., regarding misdemeanor pretrial intervention programs, to reflect the changes made by this bill. Entry into a program is voluntary, the defendant agreeing to drug court is subject to a coordinated strategy for treatment, noncompliance can lead to confinement, and the possible sanctions must be provided to the defendant in writing before the defendant agrees to drug court.

This bill amends s. 985.306, F.S., regarding delinquency pretrial intervention, as it relates to drug offenses and referral to drug court. The bill adds the qualifying offenses of tampering with evidence, solicitation to purchase a controlled substance, and obtaining a prescription by fraud. The section is amended to reflect the changes made by this bill. Entry into a program is voluntary, the juvenile agreeing to drug court is subject to a coordinated strategy for treatment, noncompliance can lead to confinement, and the possible sanctions must be provided to the defendant in writing before the defendant agrees to drug court.

#### C. SECTION DIRECTORY:

Section 1 amends s. 39.001, F.S., relating to substance abuse services in proceedings relating to children, to add legislative intent.

Section 2 amends s. 39.407, F.S., to provide that a court may order a substance abuse assessment or evaluation at any point after a shelter or dependency petition has been filed.

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<sup>13</sup> This would have the effect of overruling the effect of the decision in *Diaz v. State*, 884 So.2d 299 (Fla. 4th DCA 2004). Note that the court in that case suggested that the Legislature make this change.

<sup>14</sup> These positions were established in prior budgets, and are currently staffed and funded.

Section 3 amends s. 39.507, F.S., to provide that a court may order a substance abuse assessment or evaluation after a finding of dependency and that the court may supervise compliance with treatment.

Section 4 amends s. 39.521, F.S., to provide that a court may order a substance abuse assessment or evaluation if a child has been adjudicated dependent and to participate in a treatment program including a treatment-based drug court.

Section 5 amends s. 39.701, F.S., to provide that a court may modify a dependency case plan to add a referral of a caregiver to a drug court program.

Section 6 amends s. 397.334, F.S., to expand treatment-based drug court program options.

Section 7 amends s. 910.035, F.S., relating to transfers from county for pleas and sentencing.

Section 8 amends s. 948.08, F.S., to provide that entry into a felony pretrial intervention program, including treatment-based drug courts, is voluntary and to require a protocol of sanctions for these programs.

Section 9 amends s. 948.46, F.S., to provide that entry into a misdemeanor pretrial intervention program, including a treatment-based drug court program, is voluntary and to require a protocol of sanctions for these programs.

Section 10 amends s. 985.306, F.S., to provide that entry into a delinquency pretrial intervention program, including a treatment-based drug court program, is voluntary and to require a protocol of sanctions for these programs. Also expands the list of crimes for which an offender is eligible for participation in a delinquency pretrial intervention program.

Section 11 provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

**Indeterminate.** Counties are allowed, but not required, to establish drug courts. The bill, however, requires the court to include a protocol of sanctions for individuals in pre-trial intervention programs which are authorized for all counties. The protocol of sanctions must include jail-based treatment programs and incarceration for non-compliance of up to 6 months. These two sanctions would result in costs to the counties. There are no data available to estimate the number of individuals that would be incarcerated under the provisions of the bill and whether there would be increased numbers of individuals affected than by current practices. It should be noted, however, that pre-trial

intervention programs are already authorized in law and are designed to reduce jail populations and associated costs. Thus, pre-trial intervention programs are generally perceived as providing a financial benefit to counties.

In addition, the Department of Juvenile Justice states that the bill would increase the number of youth eligible for secure detention due to sanctions required by the bill. The department estimates that 1,266 youth will be subject to a 5 day sanction for a first violation and 326 youth will be subject to a 15 day sanction for a second violation. The department estimates that this will result in 11,220 additional bed days being utilized in secure detention. At current per diem rates for secure detention, this represents expenditures of \$1.2 million per year. Since pre-adjudication costs for secure detention will become a county responsibility on July 1, 2005, it is presumed that the counties will be responsible for these costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase use of private drug assessment and treatment programs. Individuals are often required to pay for services ordered through drug courts.

D. FISCAL COMMENTS:

Department of Children and Family Services

In its analysis of this bill as filed, the Department of Children and Family Services (DCF) reports that “[f]or those individuals who are eligible for payment of the assessment by the department, it is estimated the impact of this bill will be absorbed into current substance abuse system of care provided for an estimated 8,602 adults and 2,172 children involved in the drug court system.” DCF reports that this fiscal impact analysis is based on information from the Office of State Courts Administrator that there will not be a significant increase in the frequency of substance abuse assessments.

Office of State Courts Administrator

The Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there will not be a fiscal impact related to the provision that each judicial circuit, contingent upon appropriation, establish the position of drug court coordinator.

In its analysis of this bill as filed, the Office of State Courts Administrator notes that:

The drug court programs would determine, based upon their existing resources, whether they can expand to include the additional eligible offenders. However, it is not anticipated that this will have a fiscal impact since the language in the bill is permissive and participation in a drug court program is not mandated where no funds exist.

Under the implementation of Revision 7 to Article V of Florida’s Constitution, the state is obligated to pay from state revenues certain case management costs which include “service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334.”<sup>15</sup> However, “costs associated with the application of therapeutic jurisprudence principles by the courts” are excluded from the mandated portion of these costs to be borne by the state. Therefore, while costs associated with case management will be paid by the state, to the extent the assessments and treatment described by the provisions of the bill are “therapeutic,” they do not appear to have a significant fiscal impact on the state.

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<sup>15</sup> Section 29.004(10)(d), F.S.

## Committee on Criminal Justice Fiscal Comments

The State Courts Administrator asserts that the costs of evaluation of individuals ordered by a dependency court would be “therapeutic”, and therefore not paid by the state under s. 29.004(10), F.S. However, that section is one applicable to “case management services”. Section 29.004(6), F.S., provides that the state will be responsible for “expert witnesses not requested by any party which are appointed by the court pursuant to an express grant of statutory authority.” If a finding is made that an assessment is not therapeutic, but only explores whether therapeutic services are necessary, then s. 29.004(10), F.S., will not apply and the state may be obligated to pay for the evaluation for indigent persons.

Currently, these assessments are already being ordered and paid for through a variety of sources, including payment by individuals who can afford it. The number of annual assessments is unknown. Also unknown is whether this bill will increase the number of substance abuse assessments ordered. In FY 2002-2003, there were 16,215 dependency cases filed.<sup>16</sup> If 70% of cases involve substance abuse, and courts were to order a substance abuse evaluation in each case, this would result in a potential of 11,351 cases with substance abuse evaluations. Note, however, that some cases may involve multiple individuals, but that evaluations may not be ordered where the individual admits to his or her addiction. The estimated cost for an assessment is \$50.

While it is possible that the assessments provided for in this bill may require state payment of the assessment if the individual is indigent and there is no other source of payment for the assessment, the fiscal cost is indeterminate.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Although counties are given the option of whether to fund drug courts, the bill allows the courts to impose sanctions on pre-trial intervention participants which involve incarceration in county jail, jail-based treatment programs and secure juvenile detention. Thus, the bill would appear to require counties to expend funds. While the Department of Juvenile Justice estimates a \$1.2 million impact, data to estimate the amount of any jail bed impact are unavailable. In addition, pre-trial intervention programs are already authorized under current law and are designed to reduce jail populations and associated costs. So these programs are generally perceived as providing financial benefit to counties that outweigh the costs.

Article VII, Section 18 of the state constitution reads as follows: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.”

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<sup>16</sup> Trial Court Statistical Reference Guide, published by the Office of State Courts Administrator.

Subsection (d) provides for several exemptions to Section 18. Among them are criminal laws and laws having insignificant fiscal impact. Even if the potential costs of incarceration authorized by this bill exceeded an amount considered by the Legislature to constitute an insignificant fiscal impact, these provisions relate to the criminal law, specifically to sentencing and the implementation of criminal sanctions, and therefore are exempt from any requirements of Section 18 of Article VII of the Florida Constitution.

2. Other:

It is uncertain whether the statements that parents or other caregivers make during the substance abuse assessment can be used against them in a criminal proceeding. Although some of the persons who administer assessments may qualify as a psychotherapist for purposes of the psychotherapist and patient privilege,<sup>17</sup> the privilege does not apply to statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.<sup>18</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 9, 2005, the Criminal Justice Committee adopted one amendment to the bill, changing the phrase "child or the child's parent, caregiver, legal custodian, or other person requesting custody of the child" to simply "child or other person requesting custody of the child". The change clarifies that a parent, caregiver, or legal custodian that does not want custody of the child could not be compelled by the court to submit to a substance abuse evaluation, referred to drug court, compelled to comply with treatment, and sent to jail should he or she not comply with the treatment. By the amendment, only adults who seek custody of a child in dependency court are subject to dependency drug court.

On February 23, 2005, the Juvenile Justice Committee adopted two amendments to the bill, which: (1) changed the phrase "child or other person requesting custody of the child" to "child or other person who has custody or is requesting custody of the child;" and (2) changed the phrase "within the limits established for contempt of court" to "within the time limits established for contempt of court." The first amendment permits a dependency court to require persons who have custody of child, in addition to those who are requesting custody of the child as provided in CS/HB 177, to submit to a substance abuse assessment or evaluation. The second amendment is a technical clarification that up to six months incarceration may be imposed.

On March 18, 2005, the Justice Appropriations Committee adopted a strike-all amendment. The amendment eliminated redundant language relating to the court's ability to order persons involved in a dependency proceeding to submit to a substance abuse assessment. The amendment also specifies that entry into a pre-trial intervention program or a treatment-based drug court prior to trial is voluntary. The amendment further specifies that individuals in a pre-trial intervention program or a treatment-based drug court prior to trial must be advised of the program requirements and sanctions and that the person must agree in writing to enter the program.

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<sup>17</sup> Section 90.503, F.S. The constitutional privilege against self-incrimination relates to protecting the accused from giving an admission of guilt against his or her will; Psychiatric examinations generally require testimonial communications of the person examined and any statements obtained from the patient by the doctor are used as evidence of mental condition only, and not as evidence of the factual truth contained therein, *Parkin v. State*, 238 So.2d 817 (Fla. 1970); A person's prior substance abuse treatment as part of a plea agreement, did not constitute a court-ordered examination under the statute providing that there is no psychotherapist-patient privilege for communications made during a court-ordered examination of the mental conduct of the patient, *Viveiros v. Cooper*, 832 So.2d 868, (Fla. 4th DCA 2002).

<sup>18</sup> Section 90.503(4)(c), F.S.

On April 6, 2005, the Justice Council adopted a strike-all amendment. The amendment changed the bill, as to dependency court, to:

- Remove legislative intent
- Provide that a person, other than a parent, who has a substance abuse problem, is not an appropriate placement for a child.
- Provide that court supervision over a person seeking custody is secondary to supervision, and to the providing of services, by executive branch agencies (primarily the Department of Children and Family Services).
- Provide that a failure of a caregiver to comply with treatment may be considered when determining the placement of the child.

The bill was then reported favorably with a council substitute.

The bill was then reported favorably with a committee substitute.