

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.)

Prepared By: Judiciary Committee

BILL: CS/CS/SB 184

SPONSOR: Judiciary Committee, Children and Families Committee, and Senators Lynn and Wilson

SUBJECT: Substance Abuse Treatment and Intervention

DATE: April 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Collins</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>CA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 184 provides legislative recognition that early referral and comprehensive treatment are cost effective and can help combat substance abuse problems in families. The committee substitute also establishes goals for the state relating to substance abuse treatment services in the dependency system.

This committee substitute authorizes the courts, where good cause is shown, to assess parents and children in order to identify and address substance abuse problems 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.

This committee substitute specifies that participation in assessment and treatment prior to adjudication is voluntary except as provided in s. 39.407(15), F.S. However, authorization is provided to the court to order a substance abuse assessment of a child or a person having custody or requesting custody of the child after a dependency shelter hearing or a petition for dependency is filed, or there has been adjudication of dependency or a petition filed for dependency.

Treatment-based drug court programs may include drug court programs authorized under ch. 39, F.S., post adjudicatory programs, and the provision of monitoring for sentenced offenders.

Entry into a pretrial drug treatment program must be voluntary and include a written agreement from the participant indicating that he or she understands the requirements of the program as well as the possible sanctions for non-compliance with the program. Additionally, the committee substitute specifies that requirements of the pretrial intervention program must include the

development of a coordinated strategy for the participant and a protocol for sanctioning the participant. The protocol of sanctions that may be imposed by the court must include, as available options, placement in a secure licensed clinical, jail-based, or detention-based program. The coordinated strategy must be provided to the participant before he or she agrees to enter the pretrial drug court program.

Subject to annual appropriation, this committee substitute requires each judicial circuit to establish at least one coordinator position for the treatment-based drug court program within the state court system, and authorizes the court to appoint an advisory committee.

This committee substitute also revises language allowing for the transfer of a case involved in the drug court treatment program to a different county.

Upon its approval, this act becomes a law.

This committee substitute substantially amends the following sections of the Florida Statutes: 39.001, 39.407, 39.507, 39.521, 39.701, 397.334, 910.035, 948.08, 948.16, and 985.306.

II. Present Situation:

Chapter 39 Provisions

Chapter 39, F.S., governs proceedings relating to children, including those for detention, dependency, protective investigations, custody, permanency (such as adoption), appointments of guardian advocates, and termination of parental rights. Chapter 39, F.S., incorporates the due process provisions contained in the Florida Rules of Juvenile Procedure (F.R.J.P.), such as those requiring a hearing for children and parents, the opportunity to be heard, and the right to counsel, including appointed counsel.¹

Current law authorizes the court to order a physical or mental examination by a qualified professional, upon good cause and in accordance with Rule 8.675, F.R.J.P., whenever the mental or physical condition of a parent or legal custodian is controverted (s. 39.407(14), F.S.). No requirement exists 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.

Substance Abuse

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.² CASA estimates that substance abuse causes or contributes to seven out of ten 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.

¹ See Rules 8.290 - 8.695, F.R.J.P.

² "No Safe Haven: Children of Substance-Abusing Parents," January 1999.

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.
- 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

Section 397.334, F.S., authorizes the use of county funding to share resources and the responsibilities associated with the 85 treatment-based drug court programs. 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 model of a drug court program and currently each of the 20 judicial circuits has a drug court program in place. The program may be established in misdemeanor, felony, family, or other court divisions. The intent of the Legislature, as stated in s. 397.334(1), F.S., is to encourage other state agencies to support the creation and establishment of the drug court programs. Treatment-based drug court programs may include pre-trial intervention programs as provided for in ss. 948.08, 948.16, and 985.306, F.S.

Adult Pretrial Intervention

Section 948.08(6), F.S., allows defendants charged with certain drug purchase or possession felonies, prostitution, or tampering with evidence 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 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.

Section 910.035, F.S., relates to transfer orders for a defendant out of county. This section provides for transfer to a drug court program in another county (s. 910.035(5), F.S.).

Delinquency Pretrial Intervention

Section 985.306, F.S., provides for a pretrial intervention program in the juvenile justice system. To the extent that funds are available, 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 at least a year when approved by the chief judge or alternative sanctions coordinator of the circuit.

III. Effect of Proposed Changes:

Dependency Court – Referrals to Drug Court

This committee substitute amends s. 39.001(4), F.S., to provide recognition by the Legislature that early referral and comprehensive treatment are cost effective and can help combat substance abuse problems in families. This committee substitute establishes the following legislative goals for the state relating to substance abuse treatment services in the dependency system:

- To ensure the safety of children;
- To prevent and remediate the consequences of substance abuse with 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;
- To expedite permanency for children and reunify healthy, intact families when appropriate; and
- To support families in recovery.

Legislative intent is provided that encourages the use of the drug court program model established under s. 397.334, F.S., and authorizes the courts to assess parents and 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. However, participation in assessment and treatment prior to adjudication is voluntary except as provided in s. 39.407(15), F.S. Additionally, this committee substitute provides that participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult and is intended to enable these agencies to better meet their needs through shared responsibility and resources.

This committee substitute amends s. 39.407, F.S., authorizing the court, at any time after the shelter hearing or petition for dependency is filed, to order a child or the person having or requesting custody of the child to submit to a substance abuse assessment or evaluation upon good cause shown. The assessment or evaluation must be conducted by a qualified professional

as defined in s. 397.311, F.S.³ These provisions do not authorize the placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

This committee substitute amends s. 39.507, F.S., to provide that after an adjudication of dependency, or a finding of dependency when adjudication is withheld, the court may order a child or a person who has custody or is requesting custody of the child to submit to a substance abuse assessment and evaluation. This assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311, F.S. The court is also authorized to require the 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, F.S.

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 the child or a person who has custody or is requesting custody of the child. The court is also allowed to impose appropriate available sanctions for noncompliance upon the child or a person who has custody or is requesting custody of the child, or make a finding on noncompliance for consideration when determining whether an alternative placement of the child is in the child's best interests.

Any order entered upon this subsection may be made only upon good cause shown. This committee substitute does not authorize placing the child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

Likewise, s. 39.521, F.S., is amended to specifically authorize the court to require a person to participate in substance abuse assessment and treatment, and to impose sanctions for non-compliance.

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 or legal custodian participate in treatment-based drug court programs established under s. 397.334, F.S. This provision will allow for case closures to be completed in accordance with time frames that may be necessary for the person seeking to obtain child custody to successfully complete a substance abuse treatment program.

Drug Court

Section 397.334(2), F.S., is created specifying that entry into a pretrial treatment-based drug court program is voluntary. The court is authorized to order an individual to enter into a pretrial treatment-based drug court program only upon a written agreement provided by the program participant that includes an acknowledgement that the participant understands the requirements of the program and the potential sanctions for failing to comply with these requirements.

³ A "qualified professional" includes both licensed physicians and persons who hold a minimum of a bachelor's degree and are certified through a department-recognized certification process for substance abuse treatment services. s. 397.311(24), F.S.

This committee substitute renumbers and amends s. 397.334(3), F.S., providing that treatment-based drug court programs are authorized to include drug court programs under the newly created section of ch. 39, F.S., post adjudicatory programs, the provision of monitoring for sentenced offenders. While enrolled in a treatment-based drug court program the participant is subject to a coordinated strategy that includes a protocol of sanctions that may be imposed on the participant.

This committee substitute deletes the provision in s. 985.306(2), F.S., permitting the chief judge in each circuit to appoint an advisory committee for the delinquency pretrial intervention program and amends s. 397.334(7), F.S., to authorize 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, public defender, treatment-based drug court program coordinators, community representatives, including representatives from the community treatment program, and any other persons the chair deems appropriate. The chief judge, judge of the treatment-based court program, state attorney, and public defender may each name a designee to serve on the committee.

Section 910.035, F.S., is amended to revise language with respect to the conditions necessary for transferring the cases of defendants involved in the drug treatment program. Trial courts are directed 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 committee substitute specifies in s. 397.334(5), F.S., that subject to annual appropriation, each judicial circuit to 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 provisions for a coordinator position made by this committee substitute are supported in ch. 29.004, F.S., (implementing Article V) that indicates one of the elements of the state courts system that is to be provided by state revenues is the service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334, F.S.

Pretrial Intervention Requirements

This committee substitute amends ss. 397.334, 948.08, 948.16, and 985.306, F.S., to specify that pretrial intervention programs must require that each enrolled participant be subject to a coordinated strategy which is developed by a drug court team under s. 397.334(3), F.S. The committee substitute requires that the coordinated strategy include a protocol of sanctions that may be imposed on the participant. This committee substitute also specifies that the protocol of sanctions included in the coordinated strategy must include, as available options, placement in a secure licensed clinical or jail-based treatment program or serving a period of incarceration for non-compliance with program rules within the limits established for contempt of court. The coordinated strategy must be provided, in writing, to the participant before the participant agrees to enter a pretrial treatment-based drug court program.

The impetus for strengthening language pertaining to sanctions for pretrial intervention programs stems from a ruling by the Florida Second District Court of Appeals.⁴ In this case, the appeal court ruled that "...the trial court has no authority to impose a term of imprisonment with a resumption of normal criminal proceedings." In response to a motion for rehearing filed by the State, the court acknowledged the success of drug court programs and indicated that there was no wish to cripple the effectiveness of these programs. The appeal court further suggested that "It may be that the Legislature needs to review the adequacy of the statutory enforcement provisions" for pretrial intervention programs.

This committee substitute does not identify any substance abuse programs that are considered a "secure licensed clinical program." The Department of Children and Family Services Substance Abuse Office indicates that Addictions Receiving Facilities are the only secure substance abuse facilities licensed in Florida, and there are currently fewer than 10 of these facilities in the state. These facilities are primarily located in larger metropolitan areas and would be unlikely to have the capacity to serve pretrial intervention program participants. The Substance Abuse Office also indicates that it is unlikely that persons ordered into "secure clinical treatment" would meet the admission criteria for Adolescent Receiving Facilities specified under ch. 397, F.S.

The Department of Children and Family Services has expressed concern that, based upon the contents of this committee substitute, an individual who is involved in the dependency court system would be directed to fulfill the requirements of a pretrial intervention program that is governed by the criminal court system. There is also concern that the due process rights of a party involved in a dependency shelter or adjudicatory hearing may be violated if ordered to participate in a pretrial intervention program if the participant has not committed a crime.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This committee substitute calls for utilizing criminal sanctions in dependency proceedings which are civil proceedings. This practice could raise questions concerning whether certain due process rights pertaining to a criminal matter were afforded in the civil proceeding. These issues require further study.

⁴ Diaz v. State, 884 So.2nd 299 (8/18/2004).

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 it appears that the person administering the examination would be considered a psychotherapist for purposes of the psychotherapist and patient privilege, it also appears that no such privilege exists for court-ordered examinations such as these (s. 90.503(4)(c), F.S.). Therefore, without clarification that statements made during the substance abuse assessment are to be used only for the purpose of this proceeding, it is unknown whether this could potentially raise a constitutional self-incrimination challenge.⁵

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute may have a fiscal impact on children and their families for whom the court orders substance abuse assessment and treatment services, in that they are required to contribute pursuant to s. 397.431(2), F.S.

Private insurance companies could potentially be affected if additional persons are referred for treatment.

Treatment and community providers may experience an increase in the number of persons receiving services if additional persons are referred to treatment and other types of services under this proposal.

C. Government Sector Impact:

The Department of Children and Families has indicated that the impact of this committee substitute can be absorbed into the current substance abuse system of care that is provided for an estimated 8,602 adults and 2,172 children in the drug court system.

⁵ The custodial role that limited a mother's ability to invoke the privilege against self-incrimination where her action was compelled could limit the state from using testimonial aspects both directly and indirectly in future criminal proceedings, *Baltimore City Dept. of Social Services v. Bouknight*, 110 S.Ct. 900; 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).

There may be an undetermined fiscal impact on counties associated with providing court ordered jail or detention based treatment services to individuals who are non-compliant with the pretrial intervention program. However, this impact is expected to be minimal as the language in this committee substitute is permissive and participation in the pretrial intervention program is voluntary.

If placement in a secure licensed clinical treatment program is designated as a sanction of pretrial intervention programs, these facilities will need to be identified or developed, which may result in an undetermined fiscal impact on the Department of Children and Families.

Authorizing increased judicial oversight may result in an increase in the number and frequency of substance abuse assessments. It is not possible to determine whether there will be a fiscal impact as the language is permissive and it is unknown whether additional assessments will be conducted. Therefore, it is unknown whether there will be additional costs to be incurred, as the court will have discretion regarding the assessments and any admissions to the program.

All 20 judicial circuits have at least one drug court coordinator or a position fulfilling the function of a coordinator so there should be no fiscal impact based upon this provision. However, the language allows for additional coordinators to be requested and funded with legislative approval.

The chief judge in each judicial circuit is currently authorized in statute to appoint an advisory committee. Moving the authorizing language will not result in any additional costs.

VI. Technical Deficiencies:

There are no statutory provisions in ch. 397, F.S., for a secure licensed clinical facility as referenced in this committee substitute.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
