

1                                   A bill to be entitled  
 2           An act relating to drug court programs; amending s.  
 3           397.334, F.S.; specifying criteria that a court must  
 4           consider before sentencing a person to a postadjudicatory  
 5           treatment-based drug court program; providing for the  
 6           judge presiding over a program to hear violations of  
 7           probation or community control by program participants;  
 8           requiring circuit courts to report data relating to drug  
 9           court programs to the Office of the State Courts  
 10          Administrator; amending s. 921.0026, F.S.; specifying that  
 11          a nonviolent offense is an additional circumstance  
 12          justifying a departure from a sentence if the defendant is  
 13          amenable to a drug court program and is otherwise  
 14          qualified; amending s. 948.01, F.S.; authorizing a court  
 15          to place certain nonviolent felony offenders who are on  
 16          probation or community control into a postadjudicatory  
 17          treatment-based drug court program; amending s. 948.06,  
 18          F.S.; authorizing a court to place certain nonviolent  
 19          felony offenders who violate their probation or community  
 20          control into a postadjudicatory treatment-based drug court  
 21          program; amending s. 948.08, F.S.; authorizing a court to  
 22          place certain nonviolent felony offenders into a pretrial  
 23          intervention treatment-based drug court program; amending  
 24          s. 948.20, F.S.; authorizing a court to place certain  
 25          chronic substance abusers who are a nonviolent felony  
 26          offender into a postadjudicatory treatment-based drug  
 27          court program; requiring the Office of Program Policy  
 28          Analysis and Government Accountability to evaluate drug

29 | court programs and submit a report to the Legislature;  
 30 | providing an effective date.

31 |

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

33 |

34 | Section 1. Present subsections (3) through (8) of section  
 35 | 397.334, Florida Statutes, are renumbered as subsection (4)  
 36 | through (9) respectively, and a new subsection (3) is added to  
 37 | that section and present subsection (5) of that section is  
 38 | amended to read:

39 | (3) (a) Entry into any postadjudicatory treatment-based  
 40 | drug court program as a condition of probation or community  
 41 | control, pursuant to s. 948.01, shall be based upon the  
 42 | sentencing court's assessment of the defendant's criminal  
 43 | history, substance abuse screening outcome, amenability to the  
 44 | services of the program, the total sentence points, and the  
 45 | defendant's agreement to enter the program.

46 | (b) A probationer who is sentenced to a postadjudicatory  
 47 | drug court program and who, while a drug court participant, is  
 48 | the subject of a violation of probation or community control  
 49 | under s. 948.06, based solely upon a failed or suspect substance  
 50 | abuse test administered pursuant to s. 948.01 or s. 948.03,  
 51 | shall have the violation of probation or community control heard  
 52 | by the judge presiding over the postadjudicatory drug court  
 53 | program. The judge shall dispose of any such violation, after a  
 54 | hearing on or admission of the violation, as he or she deems  
 55 | appropriate provided that the resulting sentence or conditions  
 56 | are lawful.

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

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

79            Section 2. Paragraph (m) is added to subsection (2) of  
 80 section 921.0026, Florida Statutes, and subsection (3) is  
 81 amended to read:

82            921.0026 Mitigating circumstances.--This section applies  
 83 to any felony offense, except any capital felony, committed on  
 84 or after October 1, 1998.

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

88 (m) The defendant's offense is a nonviolent felony and the  
 89 court determines that the defendant is amenable to the services  
 90 of a postadjudicatory treatment-based drug court program, and is  
 91 otherwise qualified to participate in the program as part of the  
 92 sentence. For purposes of this paragraph, the term "nonviolent  
 93 felony" means a third degree felony violation of chapter 810 or  
 94 any other felony offense that is not a forcible felony as  
 95 defined in s. 776.08.

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

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

103 948.01 When court may place defendant on probation or into  
 104 community control.--

105 (7) (a) The sentencing court may place the defendant into a  
 106 postadjudicatory treatment-based drug court program if the total  
 107 sentence points under s. 921.0024 are 60 points or fewer and the  
 108 defendant is a nonviolent felony offender, amenable to substance  
 109 abuse treatment, and otherwise qualifies under s. 397.334(3).  
 110 The satisfactory completion of the program shall be a condition  
 111 of the defendant's probation or community control. For purposes  
 112 of this subsection, the term "nonviolent felony" means a third

113 degree felony violation of chapter 810 or any other felony  
 114 offense that is not a forcible felony as defined in s. 776.08.

115 (b) The defendant must be fully advised of the purpose of  
 116 the program and the defendant must agree to enter the program.  
 117 The original sentencing court shall relinquish jurisdiction of  
 118 the defendant's case to the postadjudicatory drug court program  
 119 until the defendant is no longer active in the program, the case  
 120 is returned to the sentencing court due to the defendant's  
 121 termination from the program, or the defendant's sentence is  
 122 completed.

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

125 948.06 Violation of probation or community control;  
 126 revocation; modification; continuance; failure to pay  
 127 restitution or cost of supervision.--

128 (2)

129 (i)1. The court may order the offender to successfully  
 130 complete a postadjudicatory treatment-based drug court program  
 131 if:

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

136 b. The offender's Criminal Punishment Code scoresheet  
 137 total is 60 points or fewer after including points for the  
 138 violation;

139 c. The underlying offense is a nonviolent felony. For  
 140 purposes of this subsection, the term "nonviolent felony" means

141 a third degree felony violation of chapter 810 or any other  
 142 felony offense that is not a forcible felony as defined in s.  
 143 776.08;

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

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

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

151 2. After the court orders the modification of community  
 152 control or probation, the original sentencing court shall  
 153 relinquish jurisdiction of the offender's case to the  
 154 postadjudicatory treatment-based drug court program until the  
 155 offender remains active in the program, the case is returned to  
 156 the sentencing court due to the offender's termination from the  
 157 program, or the offender's sentence is completed.

158 Section 5. Paragraph (a) of subsection (6) of section  
 159 948.08, Florida Statutes, is amended to read:

160 948.08 Pretrial intervention program.--

161 (6) (a) For purposes of this subsection, the term  
 162 "nonviolent felony" means a third degree felony violation of  
 163 chapter 810 or any other felony offense that is not a forcible  
 164 felony as defined in s. 776.08. Notwithstanding any provision of  
 165 this section, a person who is charged with a nonviolent felony  
 166 and is assessed with a substance-abuse problem, or is charged  
 167 with a felony of the second or third degree for purchase or  
 168 possession of a controlled substance under chapter 893,

169 prostitution, tampering with evidence, solicitation for purchase  
 170 of a controlled substance, or obtaining a prescription by fraud;  
 171 who has not been charged with a crime involving violence,  
 172 including, but not limited to, murder, sexual battery, robbery,  
 173 carjacking, home-invasion robbery, or any other crime involving  
 174 violence; and who has not previously been convicted of a felony  
 175 ~~nor been admitted to a felony pretrial program referred to in~~  
 176 ~~this section~~ is eligible for voluntary admission into a pretrial  
 177 substance abuse education and treatment intervention program,  
 178 including a treatment-based drug court program established  
 179 pursuant to s. 397.334, approved by the chief judge of the  
 180 circuit, for a period of not less than 1 year in duration, upon  
 181 motion of either party or the court's own motion, except:

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

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

195 Section 6. Section 948.20, Florida Statutes, is amended to  
 196 read:

197           948.20 Drug offender probation.--If it appears to the  
 198 court upon a hearing that the defendant is a chronic substance  
 199 abuser whose criminal conduct is a violation of s. 893.13(2)(a)  
 200 or (6)(a), or other nonviolent felony, the court may either  
 201 adjudge the defendant guilty or stay and withhold the  
 202 adjudication of guilt. ~~and,~~ In either case, the court ~~it~~ may  
 203 also stay and withhold the imposition of sentence and place the  
 204 defendant on drug offender probation or into a postadjudicatory  
 205 treatment-based drug court program if the defendant otherwise  
 206 qualifies. For purposes of this section, the term "nonviolent  
 207 felony" means a third degree felony violation of chapter 810 or  
 208 any other felony offense that is not a forcible felony as  
 209 defined in s. 776.08.

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

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



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224           Section 7. The Legislature intends to monitor and evaluate  
225 the implementation and effectiveness of pretrial and  
226 postadjudicatory drug court programs, particularly as they  
227 target and serve offenders pursuant to s. 948.01(7) and s.  
228 948.06(2)(i). The Office of Program Policy Analysis and  
229 Government Accountability is directed to evaluate the  
230 effectiveness of pretrial and postadjudicatory drug court  
231 programs and issue a report of its findings and recommendations  
232 to the Legislature by October 1, 2010.

233           Section 8. This act shall take effect July 1, 2009.