

FINAL BILL ANALYSIS

BILL #: CS/SB 400

FINAL HOUSE FLOOR ACTION:

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SPONSOR: Sen. Wise (Rep. Rouson)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/HB 81

SUMMARY ANALYSIS

CS/SB 400 passed the House on April 26, 2011. The bill was approved by the Governor on May 5, 2011, chapter 2011-33, Laws of Florida, and becomes effective July 1, 2011.

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.

In 2009, the admission criteria for post-adjudicatory drug courts was created to include more serious prison-bound, non-violent offenders and to allow drug court judges to hear any probation or community control violations related to failed substance abuse tests. The goal was to increase state savings by diverting prison-bound offenders to drug court programming. However, the Office of Program Policy Analysis & Government Accountability recently reported that without further post-adjudicatory drug court program expansion the projected savings will not be realized.

The bill:

- Allows the drug court participant to have all their probation and community control violations heard by the judge presiding over the post-adjudicatory drug court.
- Allows an offender to be placed into a post-adjudicatory drug court after violating the terms of their probation or community control.
- Increases the number of sentencing points allowed for admission into the post-adjudicatory treatment-based drug court program from 52 to 60 to allow more offenders to be sentenced to the program.

The Criminal Justice Impact Conference met March 2, 2011 and determined that this bill will have an indeterminate impact on state prison beds. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Drug Court Background

The drug court concept was developed in 1989 in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. 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.” 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 and the criminal justice system together. There are two types of drug court programs: pre-trial diversion and post-adjudicatory.¹

Pre-trial Diversion Drug Courts

Pre-trial diversion drug courts are designed for first-time offenders who, in lieu of the program, would likely be placed on county probation. Participants are diverted into the program prior to adjudication. Upon successful completion of the program, the offender’s charges may be dropped.²

A person is eligible for pretrial diversion drug court if he or she is charged with a second or third degree felony for purchase or possession of a controlled substance under chapter 893, F.S., prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud and he or she:

- 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;
- Has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in s. 948.08, F.S.; and
- Has not rejected on the record previously offered admission into the program.^{3,4}

Post-adjudicatory Drug Courts

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who have been adjudicated and typically have prior convictions. Post-adjudicatory drug courts generally use graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays.⁵ Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.⁶

¹ *The Florida Drug Court System*, publication by the Florida Supreme Court, revised January 2004, p.1.

² *State’s Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Office of Program Policy Analysis & Government Accountability, Report No. 09-13.

³ Section 948.08(6)(a), F.S.

⁴ However, if the state attorney can prove that the defendant was involved in the dealing or selling of controlled substances, the court can deny the defendant’s admission into a pretrial intervention program. Section 948.08(6)(a)2., F.S.

⁵ OPPAGA Report No. 09-13.

⁶ *Id.*

Post-adjudicatory Drug Court Expansion

In 2009, the Legislature appropriated \$19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to expand post-adjudicatory drug courts into eight counties.⁷ Currently, there are 30 post-adjudicatory drug courts operating in 14 judicial circuits.⁸

Through the passage of ch. 2009-64, L.O.F., the Legislature created criteria for admission to post-adjudicatory drug courts to include more serious prison-bound, non-violent offenders.⁹ The goal was to divert these offenders from prison and reduce corrections costs by an estimated \$95 million. The eligibility criteria for post-adjudicatory drug court is based on the sentencing court's assessment of the defendant's:

- Criminal history,¹⁰
- Substance abuse screening outcome,
- Amenability to the services of the program,
- Total sentence points (must be 52 or fewer),
- Agreement to enter the program, and
- The recommendation of the state attorney and the victim, if any.¹¹

The 2009 expansion allowed for two ways for an offender to participate in post-adjudicatory drug court:

- An offender can be sentenced to drug court as a condition of their probation or community control.¹²
- An offender can be placed into drug court after violating the terms of their probation or community control due to a failed or suspect substance abuse treatment test.¹³

In addition, the expansion provided:

- Violations of probation or community control by a post-adjudicatory drug court participant due to a failed or suspect substance abuse test to be heard by the judge presiding over the post-adjudicatory drug court program. After a hearing on or admission of the violation, the judge disposes of such violation, as he or she deems appropriate.¹⁴
- A mitigating sentence factor¹⁵ that allows a defendant to participate in a post-adjudicatory program if the defendant committed a nonviolent felony,¹⁶ has a Criminal

⁷ *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Office of Program Policy Analysis & Government Accountability, Report No. 10-54.

⁸ Treatment-Based Drug Courts in Florida, Office of the State Courts Administrator, Updated October 28, 2010. On file with the Criminal Justice Subcommittee.

⁹ Prior to 2009, Florida statutes did not address eligibility criteria for post-adjudicatory drug court.

¹⁰ Section 948.06(2)(i)c., F.S., allows for a defendant who violated their probation or community control to be placed in a post-adjudicatory drug court if the underlying offense is a nonviolent felony. Section 948.01, F.S., states that a defendant can be sentenced to drug court as a condition of their probation or community control if they are a nonviolent felony offender. In both instances, nonviolent felony is defined as 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, F.S.

¹¹ Sections 397.334(3)(a), F.S.

¹² Section 948.01, F.S.

¹³ Section 948.06(2)(i)a., F.S.

¹⁴ Section 397.334(3)(b), F.S. Prior to 2009, violations by post-adjudicatory drug court participants had to be heard by the court that originally granted their probation or community control. Section 948.06, F.S.

¹⁵ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Section 921.0026, F.S., provides that a sentence may be "mitigated,"

Punishment Code scoresheet total of 52 points or fewer after including points for the violation, and is amenable to the services and is otherwise qualified.

2010 OPPAGA Report

In 2010, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) issued a report on the post-adjudicatory drug court expansion. OPPAGA reported the post-adjudicatory drug courts were generally meeting standards for their operation, but that they were not likely to generate the projected cost savings. Specifically OPPAGA found that, initial admissions targets overestimated the potential population of offenders who would qualify for the programs, strict eligibility criteria limited admissions, and some programs appeared to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court.¹⁷

The Office of the State Court Administrator reported to OPPAGA that “as of June 30, 2010, the state had not spent approximately \$18.1 million, or 96%, of the funds.”¹⁸ The state has until September 30, 2012 to spend the remaining amount before the money is reverted back to the federal government.

To prevent reverting the funds and to increase state savings by diverting prison-bound offenders, OPPAGA made the following suggestions to the Legislature:

- Expand drug court criteria to serve more prison-bound offenders by:
 - Authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation, and
 - Giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.
- Include additional counties to divert more prison-bound offenders.
- Require existing expansion courts to serve predominantly prison-bound offenders.
- Shift federal drug court funds to other prison diversion programs.¹⁹

Effect of the Bill

CS/SB 400 removes the nonviolent felony offender admission criteria from s. 948.01, F.S., and mirrors the admission criteria found in s. 948.06, F.S., to allow a defendant to be placed into a post-adjudicatory drug court when the offense he or she committed was a nonviolent felony.

Currently only probation and community control violations related to a failed or suspect substance abuse test are heard by the judge presiding over the post-adjudicatory drug court. The bill allows the drug court participant to have all of their probation and community control violations heard by the presiding post-adjudicatory drug court judge.

which means that the length of a state prison sentence may be reduced or a non-prison sanction may be imposed even if the offender scored a prison sentence, if the court finds any permissible mitigating factor.

¹⁶ Section 948.08(6), F.S., defines the term “nonviolent felony” as a third degree felony violation of chapter 810 (entitled Burglary and Trespass) or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

¹⁷ *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Office of Program Policy Analysis & Governmental Accountability, Report No. 10-54.

¹⁸ *Id.* at p. 6.

¹⁹ *Id.*

The bill allows an offender to be placed into a post-adjudicatory drug court after violating any of the terms of their probation or community control. This expands current law which allows offenders to be placed into a post-adjudicatory drug court for only violations related to a failed or suspect substance abuse test.

The bill also increases the maximum amount of Criminal Punishment Code scoresheet points from 52 to 60 that an offender can have and still be eligible for participation in the post-adjudicatory drug court program. Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a post-adjudicatory drug court program may not score more than 60 sentencing points.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Substance abuse treatment providers could see a positive fiscal impact if more people become eligible for post-adjudicatory drug court.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met March 2, 2011, and determined that this bill will have an indeterminate impact on state prison beds. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior.